United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

76-7473

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

BOISE CASCADE CORPORATION,

Plaintiff-Appellant,

-against-

E. TODD WHEELER and THE PERKINS & WILL PARTNERSHIP,

Defendants-Respondents.

B
P/C

APPEAL FROM A JUDGMENT OF THE
UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

75 Civ. 6072 (LFM)

JOINT APPENDIX

REID & PRIEST
Attorneys-at-Law
40 Wall Street
New York, New York 10005
(212) 344-2233

PAGINATION AS IN ORIGINAL COPY

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Notice of Motion to Dismiss Amended Complaint

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

BOISE CASCADE CORPORATION,

Plaintiff,

-against-

F. TODD WHEELER and THE PERKINS & WILL PARTNERSHIP,

Defendant.

----------x

75 Civ. 6072 (LFM)

NOTICE OF MOTION

S I R S :

PLEASE TAKE NOTICE that upon all applicable prior proceedings, papers and orders in the above-captioned action, the annexed affidavits of Joseph A. Bergadano, sworn to March 10, 1976; David L. Ginsberg, sworn to March 8, 1976; Willem A. Swaan, sworn to March 8, 1976; John D. Haines, sworn to March 10, 1976; and the exhibits annexed thereto and submitted herewith, the undersigned will move this Court on March 12, 1976, at 2:15 P.M., in Room 501 (or such other room as the Court may designate), United States Courthouse, Foley Square, New York, N. Y., for an order dismissing the amended complaint herein and this action under Rules 12(b) and 19, Federal Rules of Civil Procedure, for the plaintiff's failure to join an indispensable party plaintiff and under Rule 12(b) (1), Federal Rules of Civil Procedure, for lack of subject matter jurisdiction because complete diversity of citizenship does not and will not exist between the indispensable plaintiffs and the defendants herein, together with such other, further and different relief as to the Court may seem just and proper.

BEST COPY AVAILABLE

Affidavit in Support of Motion to Dismiss

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

BOISE CASCADE CORPORATION,

Plaintiff,

-against-

E. TODD WHEELER and THE PERKINS & WILL PARTNERSHIP,

Defendants.

75 Civ. 6072
(Judge MacMahon)

AFFIDAVIT

----------x

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss.:

DAVID L. GINSBERG, being duly sworn, deposes and says:

1. I am one of the partners of the defendant, The Perkins & Will Partnership, and I am the partner in charge of the offices of that firm at 488 Madison Avenue, New York, New York, and at 445 Hamilton Avenue, White Plains, New York.

2. I am and have been for many years a resident of the State of New York and was a resident of the State of New York at the time this action was instituted in December, 1975.

David L. Ginsberg

Sworn to before me this
8th day of March, 1976.

Phyllis R. Glassman

[illegible] 31, 1976
#1419465

Affidavit in Support of Motion to Dismiss

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

BOISE CASCADE CORPORATION,

75 Civ. 6072
(Judge MacMahon)

Plaintiff,

-against-

AFFIDAVIT

E. TODD WHEELER and THE PERKINS & WILL PARTNERSHIP,

Defendants.

----------x

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss.:

WILLEM A. SWAAN, being duly sworn, deposes and says:

1. I am a partner of the defendant, The Perkins & Will Partnership.

2. I am and was a resident of the State of New York at the time the within suit was instituted in December, 1975.

Willem A. Swaan

Sworn to before me this
8th day of March, 1976.

Phyllis R. Glassman

Notary Public, State of New York
Qualified in Nassau County
Commission Expires March 31, 1976
#1419465

Affidavit in Support of Motion to Dismiss

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

BOISE CASCADE CORPORATION,

Plaintiff,

-against-

E. TODD WHEELER and THE PERKINS & WILL PARTNERSHIP,

Defendants.

----------x

75 Civ. 6072
(Judge MacMahon)

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss.:

JOHN D. HAINES, being duly sworn, deposes and says:

1. I am a partner of the defendant, The Perkins & Will Partnership.

2. I am and was a resident of the State of New York at the time the within suit was instituted in December, 1975.

John D. Haines

Sworn to before me this
10th day of March, 1976.

Cynthia R. Glassman

31, 1976
#1419465

Affidavit in Support of Motion to Dismiss

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

JOSEPH A. BERGADANO, being duly sworn, deposes and says:

I am a member of the firm of Hart & Hume, one of the attorneys for defendant The Perkins & Will Partnership herein. I am personally familiar with the facts hereinafter set forth. I make and respectfully submit this affidavit in support of the defendants' motion for an order dismissing the amended complaint and the instant action under Rules 12(b) and 19, Federal Rules of Civil Procedure, for the plaintiff's failure to join an indispensable party plaintiff and under Rule 12(b)(1), Federal Rules of Civil Procedure, for lack of subject matter jurisdiction because complete diversity of citizenship does not and will not exist between the indispensable plaintiffs and the defendants herein, together with such other, further and different relief as to the Court may seem just and proper.

It is the defendants' contention on the instant motion that a New York corporation, Walter Kidde Constructors, Inc. ("Kidde"), is an indispensable party plaintiff in this action. As shown by the annexed affidavits of three (3) partners of defendant The Perkins & Will Partnership, including the partner in charge of the partnership's two New York offices, they were residents and citizens of the State of New York at the time of the commencement of this action and have remained so and are such residents and citizens at the present time. Consequently,

since Kidde, an indispensable party plaintiff to this action, is also a citizen of the State of New York, there will be a lack of the required diversity of citizenship upon the necessary joinder of Kidde as a plaintiff in this action to confer jurisdiction upon this Court over the subject matter of this action. Conversely, since one of the base of jurisdiction for this action alleged by the plaintiff is the diversity of citizenship between the plaintiff and the defendants, upon the joinder of Kidde who is an indispensable party plaintiff in this action, this Court will be ousted of jurisdiction for the lack of the necessary diversity of citizenship between the plaintiffs and the defendants.

While I do not wish to and have no intention of burdening the Court with unnecessary facts, I respectfully submit that for the Court to have a full understanding and presentation of the pertinent facts and documents in support of the defendants' position it is necessary to set forth (1) the chronology of this action; (2) the chronology, pertinent facts and documents in connection with the construction job out of which this entire matter and a related but completely separate pending arbitration proceeding in which Kidde is the claimant asserting substantially the same basic money claims as are being made by the plaintiff herein; and (3) the facts and documents brought out upon the taking of the deposition of a witness produced by the plaintiff in this action pursuant to the direction of this Court.

CHRONOLOGY OF THIS ACTION

On about December 5, 1975 the plaintiff herein ("Boise") filed its original summons and complaint in this Court. Thereafter, the summons and complaint was served upon the defendants herein.

In addition, on or about December 23, 1975 Boise obtained an ex-parte order of this Court permitting it to serve a number of the partners and former partners of the defendant partnership by mail. A copy of that order is annexed hereto, marked "Exhibit A".

Thereafter, the defendants duly served their answers to the original complaint and issue was joined. Defendants started discovery of the plaintiff during the course of which, at Boise's request, a pre-trial conference was held before this Court on January 28, 1976. As the Court will recall, the Court at that time dismissed the original complaint for violation of the Federal Rules of Civil Procedure and the Rules of this Court, with leave to the plaintiff to replead, with certain conditions in connection therewith. At the same time the Court directed the parties to proceed with discovery of the plaintiff on the issue of diversity of citizenship, said discovery to be completed by March 1, 1976.

On February 13, 1976, the plaintiff served its amended complaint herein, a copy of which is annexed hereto marked "Exhibit B". At about the same time, the parties entered into a stipulation vacating and withdrawing any purported service of

the summons and complaint upon a number of named individuals who were not partners of the defendant partnership as of the date of the institution of this action, including the named defendant E. Todd Wheeler. A copy of said stipulation is annexed hereto, marked "Exhibit C".

Thereafter, the defendants duly served its Answer to the amended complaint, a copy of which Answer is annexed hereto, marked "Exhibit D".

In accordance with this Court's direction, during the week of February 23, 1976, the defendants took the deposition of one Arthur A. Dornbusch, II, a witness produced for examination by Boise, having knowledge of the facts relating to the question of diversity or lack of diversity of citizenship. His deposition was taken on February 23 and February 26, 1976. Copies of the transcripts of that deposition (which will be referred to hereinafter) are submitted separately, marked, collectively, "Exhibit E".

At a further pre-trial conference held before this Court on March 4, 1976, the Court directed the defendants to proceed with the instant motion and to make it returnable on Friday, March 12, 1976, as is being done.

THE PERTINENT FACTS

On October 29, 1968 Kidde (whose original name was Walter Kidde Constructors, Incorporated, later changed to Walter Kidde Constructors, Inc.) entered into a written agreement with

The Mount Sinai Hospital of Hartford, Connecticut ("the Hospital") for certain construction work at the Hospital's premises in Hartford, Connecticut. A copy of that agreement is submitted herewith, marked "Exhibit F". As shown by page "4" of that agreement, a number of documents were and are incorporated into that agreement by reference thereto, including the specifications for the work. Part of those specifications were the General Conditions for the work, a copy of which is submitted herewith, marked "Exhibit G".

Paragraph "46" of those General Conditions provides:

> "The Contractor [Kidde] shall not assign the whole or any part of this contract or any monies due or to become due hereunder without the written consent of the Owner [the Hospital] and of all sureties executing any bonds on behalf of the Contractor, in connection with said contract. In case the Contractor assigns the whole or any part of said contract or assigns all or any part of any monies due or to become due under said contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due the Contractor, or otherwise, shall be subject to all of the terms and conditions of said contract and of all instruments that are now or may hereafter be amendatory thereof of supplemental thereto, the rights and remedies of the Owner thereunder or arising by operation of law and to the liens of all persons, firms and corporations for services rendered or materials supplied in connection with the performance of said contract." (Emphasis supplied)

Kidde undertook to perform the work, which was not completed until 1973. During the course of the work various differences and disputes arose between Kidde and the Hospital, as a result of which Kidde made various claims against the Hospital

for monies it alleged was due it from the Hospital for extras, changes and delays. On July 14, 1971, Kidde presented a 51 page document of claim (plus numerous exhibits), making claim against the Hospital in the sum of $3,573,425. A copy of that claim is submitted herewith, marked "Exhibit H".

Subsequently, by a proposed change dated February 24, 1972 (the relevant portion of which is submitted herewith, marked "Exhibit I"), Kidde made claim for the sum of $335,500 for certain alleged additional costs.

By Demand dated March 24, 1974 Kidde demanded arbitration with the Hospital with regard to its aforesaid claim in the sum of $335,500. As part of that Demand, Kidde reserved "...all and every right it may have to assert and submit to arbitration any and all other claims arising out of or relating to performance of the contract herein". A copy of that Demand is submitted herewith, marked "Exhibit J".

Thereafter, Kidde served an Amended Demand for Arbitration, dated June 28, 1972, upon the Hospital in which it sought:

> "Damages sustained to date, in excess of $6,000,000.00, and any and all other damages that hereafter may be sustained by Claimant [Kidde] arising out of the contract dated October 29, 1968."

A copy of that Amended Demand is submitted herewith, marked "Exhibit K".

In that Amended Demand, Kidde stated the nature of the dispute between it and the Hospital to be:

"Claimant's Demand for Arbitration dated March 24, 1972 is hereby amended to join therein all claims which the Claimant [Kidde] has against Respondent [the Hospital] arising out of the contract between the parties dated October 29, 1968, and the job known as "The Mount Sinai Hospital, Hartford, Connecticut-Stage I Additions and Alterations", including the claims recited in Claimant's written claim submitted to the Respondent and its Architect on July 14, 1971, setting forth the Claim of Contractor [Kidde] for Time Extension for Excusable Delays and Contract Price Adjustment for Extra Costs Due to Delays for Which Owner is Responsible, concerning which written claim there has been no written decision or written interpretation of the contract requirements by the Architect within ten (10) days after written request therefor by Claimant."

Thereafter, by Demand dated April 20, 1973 the Hospital demanded arbitration against the defendants herein for:

"So much of damages claimed by Walter Kidde Constructors, Inc., which were the fault of the Architects and their Engineers."

Copy of that Demand is submitted herewith marked "Exhibit L".

As a result of the various legal proceedings in the Supreme Court, New York County and the Appellate Division, First Department, the Hospital-Architect arbitration was consolidated with the Kidde-Hospital arbitration. As a result, the Architects (the defendants herein) became, in effect, third-party defendants to the Hospital for the various claims being made by Kidde against the Hospital for delays, extras and changes arising out of the construction job involved.

As a result of other legal proceedings between the Hospital and Kidde in connection with the aforesaid arbitration, Kidde submitted certain revisions of its claims at various times,

including one dated July 6, 1973, a copy of which is submitted herewith, marked "Exhibit M". As the Court will note from that Exhibit, Kidde increased its alleged claims for extra costs and damages to the sum of $9,645,787, or approximately the amount of the alleged compensatory damages demanded by Boise in the instant action.

Thereafter, in August, 1974, Kidde served a voluminous "revised statement of claim" in connection with the legal proceedings between the Hospital and Kidde concerning that matter, the first three pages of which "revised statement" is submitted herewith, marked "Exhibit N".

After still further legal proceedings (some of which are still pending, but which are not relevant here) the Kidde-Hospital-Architects arbitration commenced in September, 1975. Eight hearings were held between then and November, 1975, when those hearings were abrogated as a result of one of the arbitrators being disqualified by the Supreme Court, New York County. That arbitration has not yet again commenced due, in part, to the delay caused by the appointment of a new, substitute arbitrator and various motions made by Kidde and others which are presently pending in the New York State Supreme Court, as a result of which the arbitration is temporarily stayed. As stated above, on December 5, 1975, about a month after the last hearing in the arbitration which was abrogated, Boise instituted the instant action against the defendant architects.

Submitted herewith, marked, collectively, "Exhibit O"

are the first few pages of the transcripts of the proceedings in the eight (8) aforesaid arbitration hearings. As the Court will note, Kidde's counsel in those proceedings is the same as Boise's counsel in this action. The same is true as to Kidde's counsel in the aforesaid proceedings in the New York State courts, the latest of which proceedings are still pending before the Supreme Court, New York County.

As the Court also will note from the above and the exhibits annexed hereto and submitted herewith, Boise was not a party to the construction contract, had no part in any of the construction at the Hospital or the contractor's (Kidde's) claims arising therefrom which presently are in arbitration, the aforesaid arbitration proceedings and the legal proceedings in connection therewith.

As the Court also will note, in both the original complaint and the amended complaint in this action, all of Boise's alleged claims arise out of the aforesaid construction, the arbitration and legal proceedings in connection therewith and alleged negilgence and fraud by the defendant architects relating thereto. There is no allegation whatsoever that Boise ever was a party to any of those matters, from the original construction contract up to the legal proceedings which are still pending before the State courts or the pending arbitration proceedings.

Nor is there any claim or allegation that Kidde in any way assigned or transferred any of its alleged claims to Boise; that it ever authorized Boise or any one else to prosecute any

alleged claims which Kidde had or alleged that it has arising out of any of the foregoing matters in Kidde's behalf or in the name of Boise as any other party; that Kidde was liquidated in any way; nor anything else which would or does give any legal right, power or standing to Boise to either institute or prosecute the instant action.

THE DEPOSITION OF THE PLAINTIFF HEREIN

As stated above, on February 23, and February 26, 1976, the deposition of Arthur A. Dornbusch, II, as a witness on behalf of the plaintiff was taken in this action pursuant to this Court's direction therefor, relating to matters pertaining to the issue of diversity or lack of diversity of citizenship. As also mentioned above, the transcripts of that deposition are submitted herewith, marked "Exhibit F". References to those transcripts will be by page/line or page-page.

Mr. Dornbusch testified that from May, 1972 to January, 1975 he was Assistant General Counsel of Boise (161/23-162/2). He testified and documents were produced to show that all of Kidde's issued and outstanding capital stock formerly was owned by Ebasco Services, Inc. ("Ebasco") the entire outstanding stock of which was in turn owned by Boise. As a result of a merger of Ebasco into Boise in 1969, Boise became the sole stockholder of the issued and outstanding stock of Kidde. (166-168) Boise owned Kidde's said stock until February 2, 1973, when Boise sold it to A. M. Kinney, Inc. ("Kinney"), an Ohio corporation. (168/15-170/13)

He further testified that was pursuant to an agreement (a copy of which was marked as "Exhibit A-D2" on that deposition), a copy of which is submitted herewith marked "Exhibit E". (170/21-171/7)

He further testified the agreement was solely between Boise and Kinney and that it was the sole agreement concerning that matter. (171/8-13; 231/11-18)

Mr. Dornbusch also testified there were no agreements between either Kinney and Kidde or between Boise and Kidde concerning that agreement. (171/14-20; 171/21)

He further testified that:

1. There were no other legal documents in connection with that agreement (171/14-172/1; 173/21-174/5);

2. There were no assignments or anything between Boise and Kidde or to anyone (174/6-14; 221-222/23);

3. There were no transfers of any assets, claims or anything of that nature by Kidde in connection with that agreement (174/15-175/3);

4. Kidde at all times had its own officers and directors and maintained separate officers and directors after the agreement of February 2, 1973 (179/18; 184; 189/23-190/11; 233 - 234);

5. Kidde gave no powers of attorney or authorization to anyone, including Boise, to prosecute any claims which Kidde had or may have, in the name of any other person on Kidde's behalf (191; 199/4-13; 253/1-25) and that there were no documents by Kidde authorizing anyone including, specifically, Boise to

prosecute any of Kidde's claims in anyone's including, specifically, Boise's name (261/6-262/11; 263/4-14);

6. There were no documents whatsoever (and none were produced although demanded) whereby Kidde in any way "adhered" or agreed to or joined in any way in the agreement dated February 2, 1973 between Boise and Kinney, either as to any of Kidde's claims or otherwise (199-200/19; 262/12-22).

He also specifically testified that all other claims or law suits or claims made or brought by or against Kidde (except for this action), including the aforesaid claims by Kidde were all in Kidde's name, including the arbitration involving Kidde's claims arising out of the construction job for the Hospital involved in this matter, reciting all of the other claims involving Kidde. (194-195/15; 254/14-256/8; 257/10-15; 257/20-24; 258/12-260/12)

There was produced at that deposition and is submitted herewith (marked "Exhibit Q") a letter dated January 8, 1975 by Kidde to Boise's counsel herein, which was marked "Exhibit A-D5" on the aforesaid deposition and the two schedules annexed thereto which set forth, respectively, the current officers and directors of Kidde (in the first "Schedule A") and the officers and directors of Kidde as of 1973 (in the second "Schedule A" annexed thereto).

In the course of his deposition, Mr. Dornbusch was also questioned several times as to whether either Kidde or Boise ever had made claims directly against the architects at any time

prior to the institution of the instant action. His testimony was that he recalled certain correspondence in connection with that matter (which correspondence he produced at the second session of the taking of his deposition) (202; 205 - 208; 234 - 238; 242/5-243/14). The pertinent part of that correspondence, which was marked "Exhibit A-D6" (with subdivisions) on the deposition is submitted herewith, marked collectively, "Exhibit R".

Also submitted herewith, marked "Exhibit S", are the only documents produced by the plaintiff and its witness upon the aforesaid deposition in response to questions and demands for the production of documents relating to Minutes of Kidde's Board of Directors in connection with the claims which Kidde had arising out of the aforesaid construction job for and at the Hospital. He testified that there were no other Minutes of Kidde's Board of Directors relating to the matters in issue in this case other than what was marked as "Exhibit A-D3" on that deposition, which is submitted herewith as "Exhibit S".

Mr. Dornbusch also testified that to his knowledge Kidde at all times was and continues to be a New York corporation which continues in existence to date as a legal entity with separate officers and directors (183/14-184; 277A/14, et seq).

As the Court will note from the agreement between Boise and Kinney ("Exhibit P"):

1. Boise sold to Kinney only Kidde's issued and outstanding capital stock. There was no sale or transfer <u>by Kidde</u> of any of its assets of any kind, including claims or choses in

action or anything else. The entire transaction was solely between Boise and Kinney without Kidde participating in any way in that transaction.

2. It is represented and warranted in that agreement (¶ 3a) that Kidde is a valid and existing New York corporation. Also submitted herewith is a card postmarked March 5, 1976 received from the Corporations Bureau of the office of the New York Secretary of State advising that Kidde assumed its present name on May 24, 1973; that its official place of business is New York County; and that no dissolution has been filed for Kidde.

3. In the paragraph numbered "5(e)" of the Boise-Kinney agreement both parties agreed that Boise would use its best efforts "...and cause Kidde to use its best efforts...to preserve Kidde's business identity, to persuade Kidde employees designated by [Kinney] from among those terminated by Kidde after December 31, 1972 to accept re-employment by Kidde, and to preserve for Kidde and for its subsidiaries good will of their suppliers, clients and others having business relations with them." (Emphasis supplied)

4. In the paragraph numbered "11" of that agreement it is specifically provided:

> 'All existing and future claims by and against Kidde arising out of work performed by Kidde ...prior to the time of closing of this sale, and all existing and future claims and assessments against Kidde in any manner or for any cause arising out of the business, affairs, and operations of Kidde...prior to

> such time of closing, or fairly attributable or traceable to such performance, business, affairs and operations prior to such time, shall be litigated and arbitrated, or defended against, by [Boise], at its expense, in the name of Kidde. [Boise] shall be entitled to all net and after-tax proceeds from said claims and shall be liable to Kidde and [Kinney] for all damages adjudged, decreed, awarded, or assessed against Kidde or [Kinney] in connection with said claims. [Boise] shall hold [Kinney] and Kidde harmless from any loss in connection with said claims and assessments." (Emphasis supplied)

The phrase "after-tax proceeds" is defined in the in the paragraph numbered "14" on page "13" of that agreement, as follows:

> "The words 'after-tax proceeds' in paragraph 11 above are intended to mean that [Boise] shall be entitled to the entire amount of such proceeds but shall pay to Kidde prior to tax due date the full amount of any and all taxes (and taxes on such payments) required to be paid by Kidde by reason of Kidde's receipt of such proceeds." (Emphasis supplied)

4. In the paragraph numbered "12" of said agreement, Boise and Kinney created four categories of wholly or partly unperformed contracts to which Kidde and/or any of its subsidiaries were then a party. Sub-paragraph "(a)" of paragraph "12", provides in pertinent part as follows:

> "Contracts that [Boise] desires Kidde to complete, or cause to be completed for [Boise's] account, namely, Mt. Sinai Hospital, ... (Emphasis supplied)

The other sub-paragraphs of the paragraph numbered "12" of that agreement have to do with contracts which Boise did not desire Kidde to complete or cause to be completed, but that Kinney desired Kidde to complete or cause to be completed; contracts that neither Boise nor Kinney wished Kidde to complete or cause

to be completed; and a specific contract, involving "Health & Mental Hygiene (New York)". The last sub-paragraph ("(d)"), makes repeated references to Kidde which, it is respectfully submitted, are highly pertinent to the instant motion. For example, it is provided in that sub-paragraph "...that Kidde shall complete..." the above mentioned contract "...for the completion of which [Boise] shall pay to Kidde its salary costs incurred in such completion, plus 25% of such costs ..." not exceeding a certain sum. (Emphasis supplied) It then goes on as follows:

> "All net sums recovered upon the presently existing and future claims of Kidde based upon extra work required due to delays in the performance of work and/or based on escallation of costs by reason of such delays, under such contract, up to but not exceeding the total amount of such payments made by [Boise] hereunder, shall go to [Boise]. One-half of the next $70,000 of any additional sums recovered upon such claims shall go to [Boise] and the balance to Kidde, one-tenth of the next $50,000 recovered upon such claims shall go to [Boise] and the balance to Kidde, and all other sums recovered upon such claims shall go to Kidde. Kidde shall not be entitled for any of the time expended by any of its personnel in presenting, urging, and supporting such claims, and all costs of presenting urging, supporting, litigating, and arbitrating such claims, other than the costs of time expended by personnel of [Boise] and of Kidde, shall be borne by [Boise] and Kidde in portion to their respective shares of the aggregate sum recovered on such claims. Pending the determination of their respective shares of the aggregate sum recovered, [Boise] and Kidde shall advance an nine-tenths and one-tenth, respectively, of all said costs. All existing and future claims against Kidde arising out of work performed by Kidde, and/or

its subsidiaries, on the [said] contract, prior to the time of closing of this sale, or fairly attributable or traceable to such performance prior to such time, shall be litigated or arbitrated, or defended against by [Boise] in the name of Kidde. [Boise] shall hold [Kinney] and Kidde harmless from any loss in connection with any such claims, and shall be liable to Kidde and [Kinney] in the amount of all damages adjudged, decreed, or awarded against Kidde or [Kinney] in connection with any such claims."

"[Boise] and [Kinney] shall promptly cause Kidde to use its best efforts to terminate, or cause to be terminated, all of the contracts listed in category (c) above. [Boise] shall hold [Kinney] and Kidde, and its subsidiaries, harmless from all damages adjudged, decreed, or awarded, and judicial orders issued, against any of them by reason of the termination of the contracts listed in category (c), and from all loss in connection with all claims or applications for such damages or orders, and shall (at its expense, and as the case may be), in the name of Kidde or of a subsidiary of Kidde or of [Kinney]) defend against all such claims and applications." (Emphasis supplied)

In the next succeeding paragraph, it is provided, in part, with regard to contracts to be completed (such as contract with the Hospital, mentioned above) that:

"Performance of category (a) contracts shall be completed and performance of category (c) contracts shall be continued (until such contracts are terminated or are fully performed), by Kidde under the project management and control of [Boise]... [Boise] shall pay to Kidde the actual cost (exclusive of profit) to Kidde of the performance of such contracts to the completion or termination thereof, shall be entitled to all receipts under such contracts, and shall hold [Kinney] and Kidde harmless from any liability or loss arising from breach of such contracts or otherwise arising in connection with such contracts."

> "[Kinney] and Kidde shall hold [Boise] harmless from any liability arising from any acts or omissions by Kidde in the performance of category (b) contracts after date of closing of this sale, provided that such acts are committed by Kidde after such date, that such omissions consist of failure to perform acts that should have been performed by Kidde after such date but were not, that such liability is not fairly attributable or traceable to acts or omissions by Kidde or occurring, prior to such date, ... [Boise] shall, however, assume the responsibility and liability for and hold [Kinney] and Kidde and its subsidiary harmless from any costs damages, and loss accruing to or sustained by any of them by reason of correction of such omissions so discovered. ..." (Emphasis supplied)

5. In the paragraph numbered "13" of said agreement it is provided in relevant part:

> "[Kinney] shall cause such Kidde personnel as are re-employed by Kidde to be made available to [Boise] on reasonable advance notice, to assist in the prosecution of defense of any litigation and/or claims referred to in paragraph "11" above and to assist in the preparation of all Federal and State income tax returns for 1972 and all of 1973 prior to the time of closing of this sale. [Boise] shall pay to Kidde the actual cost (exclusive of profit, to Kidde of the time such personnel are so employed, and their expenses." (Emphasis supplied)

The balance of the paragraph numbered "13" makes so many references to Kidde as an independent party that rather than burden the Court with an in haec verba quotation thereof, we respectfully refer the Court to those paragraphs.

In the paragraph numbered "14" there are further references with regard of payments to be made by Kidde to Boise with respect to certain tax matters as well as certain payments

to be made by Boise to Kidde with respect to tax matters. Once again rather than quote at length from that document and that paragraph, we respectfully refer the Court thereto for its contents and the legal effect thereof.

It is respectfully submitted that in view of the documented facts on the instant motion, the Court should and must grant an order dismissing the amended complaint and this action under Rules 12(b) and 19, Federal Rules of Civil Procedure, for the plaintiff's failure to join an indispensable party plaintiff (Kidde) and under Rule 12(b)(1), Federal Rules of Civil Procedure, for lack of subject matter jurisdiction because complete diversity of citizenship does not and will not exist between the indispensable parties plaintiff including Kidde and the defendants herein, together with such other, further and different relief as to the Court may seem just and proper.

JOSEPH A. BERGADANO

Exhibit B

AMENDED COMPLAINT

Plaintiff Boise Cascade Corporation ("Boise") by its attorneys, Reid & Priest, as and for its complaint against defendant E. Todd Wheeler and The Perkins & Will Partnership ("Perkins & Will"), alleges the following:

JURISDICTION

1. Diversity of Citizenship exists between the parties and the matter in controversy exceeds $10,000.00 exclusive of interest and costs.

PARTIES

2. Plaintiff Boise is a Delaware corporation; has its principal place of business in Boise, Idaho; maintains a regular office for the conduct of business at 437 Madison Avenue in the City, County and State of New York; was at all times mentioned in this complaint, by itself and another corporation merged into Boise, sole stockholder of Walter Kidde Constructors Incorporated ("Kidde") until February, 1973; was responsible for the completion of construction and any losses or expenses arising out of a Kidde contract to construct a hospital in Hartford, Connecticut (hereinafter "Project"), and is entitled to the proceeds and is responsible for the expenses of all claims arising out of the Project.

3. Upon information and belief, Perkins & Will is a partnership with its principal place of business in White Plains,

New York, with an office for business at 488 Madison Avenue, City, County and State of New York, and is engaged in the practice of architecture.

AS AND FOR A FIRST CLAIM

4. By invitation to bid, dated November 22, 1967, and in drawings and specifications included therein for the Project, all of which were sent by Perkins & Will to Kidde's New York City Office on or about November 22, 1967, Perkins & Will made the following written representations to Kidde:

(a) Drawings A-53 and A-54 were representations that Perkins & Will had investigated existing mechanical and electrical services, had determined the requirements of the owner, and had coordinated these services and requirements in a work plan for the sequence and areas of construction.

(b) The drawings and specifications were a representation that Perkins & Will investigated the nature of, and work required by the Project and that the Project consisted of the work indicated in the drawings and specifications prepared by Perkins & Will.

5. In or about July, 1968, Perkins & Will made the same representations to Kidde as stated in paragraph 4 in revised drawings and amended specifications (hereinafter "drawings and specifications").

6. Said representations were made for the purpose of inducing Kidde into constructing the Project, and Perkins & Will knew that said representations were false.

7. Kidde relied on said representations in bidding, contracting and constructing the Project from August, 1968 to on or about September 28, 1973. Kidde believed such representations and did not know and could not have known that such were false until within six years prior to the commencement of this suit.

8. In fact said representations were false in that:

(a) The sequence and areas of construction planned by drawings A-53 and A-54 were not possible in part and not feasible in part; and

(b) The entire nature of the Project was materially different from the nature of the Project as indicated by the drawings and specifications. Perkins & Will represented a fully designed Project which could be completed within three years while the Project was, in fact, a design-as-you-go five year Project. The Project consisted of (i) installing temporary buildings, which installations were materially different in their interiors from the drawings and specifications; (ii) demolition and reconstruction of a West Wing, which had to be demolished in two stages instead of one stage indicated on the drawings, had to be excavated with underpinning not included on the drawings, and had to be constructed with the laboratories on the first floor and the kitchen on the second floor, and parts of the patient bedrooms on floors five through nine,

materially different from the drawings and specifications; (iii) demolition of a North Service Unit portion of an East Wing and construction of a Wraparound in its place, which work was not in accordance with drawings A-53 and A-54; and (iv) renovation or alteration of an existing East Wing, which work was materially different from that indicated on the drawings and specifications and not in accordance with drawings A-53 and A-54.

9. As a result of said fraud, the duration and cost of the Project were greatly increased, extra work was required and done, the contract retention was withheld, the sales value of Kidde decreased, and the expense of numerous litigations and arbitrations was incurred, causing damage to Boise in the sum of $10,000,000.00.

AS AND FOR A SECOND CLAIM

10. Perkins & Will undertook to design and redesign the Project from 1967 to and including 1973. Said design was negligent in that:

(a) the location of one temporary building conflicted with the location of the work of the preconstruction contractor, which delayed construction of the temporary building in or about October, 1968;

(b) the design of interiors of temporary buildings was not sufficient for their intended use, and Perkins & Will redesigned these interiors piecemeal during construction in or about November, 1968 to February, 1969;

(c) demolition of the North Service Unit conflicted with the location of work of the preconstruction contractor, which delayed such demolition in or about November, 1968 to March, 1969;

(d) the design failed to include housing of facilities for an observation room and demolition of the connecting link portion of the existing West Wing was delayed in or about February to April 1979, while Kidde constructed housing for such facilities;

(e) the foundation design for the new West Wing did not provide adequate protection for the existing East Wing, causing the City of Hartford to stop excavation in or about June, 1969, and Perkins & Will did not provide an adequate foundation design until in or about September, 1969;

(f) the design for the duct shafts and mechanical and electrical work therein conflicted with both the designed and necessary sequence of work, and East Wing construction was delayed in or about December, 1969 to June, 1970, while Perkins & Will redesigned the duct shafts;

(g) Perkins & Will changed and delayed its final decisions on the suppliers of laboratory casework and flooring during construction of the new laboratory until about February, 1971;

(h) the design of the new kitchen was incomplete and there was no coordination between the mechanical design,

the electrical design, the structural design, and the owner's requirements, resulting in the piecemeal redesign of the kitchen during construction in or about November, 1969 to February, 1972;

(i) the design of the receptacles in the operating rooms, the fire annunciator in the West Wing, the elevator machine room in the West Wing, steel beams in the new laundry and the fan coil units in the new patient bedrooms did not comply with local safety requirements and Perkins & Will redesigned these items in or about August 1969 to February, 1972;

(j) the respective designs of work for alterations and installations in the existing East Wing were not feasible and were not coordinated with the owner's requirements and the sequence and nature of the alterations and installations were redesigned piecemeal during construction in or about June, 1970 to April, 1973;

(k) numerous details were lacking or conflicting on the drawings and specifications and Perkins & Will unreasonably delayed the answers to field questions and field memos and other resolutions to problems in or about 1968 to and including 1973; and

(l) Perkins & Will continuously disregarded its obligations and failed to perform its role as architect in a reasonably prudent manner in or about 1967 to and including 1973, while there was no contributory negligence on the part of Kidde or Boise.

11. As a result of said negligence, the duration and cost of the Project were greatly increased, extra work was required and done, the contract retention was withheld, the sales value of Kidde decreased, and the expense of numerous litigations and arbitrations was incurred, causing damage to Boise in the sum of $10,000,000.00.

AS AND FOR A THIRD CLAIM

12. The specifications for the Project prepared by Perkins & Will represented that Perkins & Will would determine disputes between Kidde and the owner, and Perkins & Will purported to undertake to determine Kidde's delay claim throughout the course of the Project.

13. On May 19, 1969, at Kidde's office, Perkins & Will orally acknowledged that Kidde had been delayed by delays that were not Kidde's fault and that the delays represented extra costs to Kidde, but stated that Kidde had to wait until completion of construction before the effect of the delays on time and cost were determined. Said acknowledgment and statement were made to induce Kidde to continue construction while making its claim against the owner. Kidde and Boise relief on said acknowledgment and statement in continuing construction in spite of mounting delays and costs. Upon the completion of construction in 1973, Perkins & Will refused to acknowledge any delay or approve any extra costs for delay.

14. At all times throughout construction of the Project, Perkins & Will had agreed to cooperate with and assist the owner in the disputes with Kidde and Boise on the claims, which agreement was in conflict with Perkins & Will fairly determining said disputes and which agreement Kidde and Boise did not and could not learn until November 1973.

15. As a result of said statements, Boise incurred its legitimate and reasonable claim for the costs of delay and extra work, incurred expenses in numerous litigations and arbitrations, suffered a reduction in the sales value of Kidde and was damaged in the sum of $10,000,000.00.

AS AND FOR A FOURTH CLAIM

16. Perkins & Will intentionally and willfully inflicted damages on Kidde and Boise by the following wrongful actions:

(a) ignoring Kidde's construction schedules submitted to Perkins & Will for approval from August, 1968 throughout the course of the construction;

(b) ignoring Kidde's requests for time and price adjustments commencing in or about February, 1969 to and including in or about December, 1974;

(c) refusing to fairly determine progress or issue a certificate of either substantial or actual completion or authorization to pay retention upon the use of the premises by the owner in or about May, 1973, the inspection by Perkins

& Will in September, 1973, or the issuance of a certificate of occupancy in September, 1973;

(d) misrepresenting to the courts in 1975 when it discovered an arbitration agreement with its engineers and whether it was a party to a proceeding in order to delay attempts to recover from the owner for breach of contract;

(e) failure to approve or to properly consider change orders and time and material authorizations;

(f) failure to inform the owner of its responsibilities to supply information and working areas pursuant to Perkins & Will's design.

17. As a result of said willful wrongdoing, Boise was not paid its legitimate claim for costs from delay and extra work, incurred additional litigation expenses, was not paid its retention and was damaged in the sum of $10,000,000.00.

WHEREFORE, plaintiff Boise requests that this Court grant it judgment against defendant Perkins & Will:

(a) for the sum of $10,000,000.00 in compensatory damages;

(b) for the sum of $10,000,000.00 in punitive damages;

(c) all fees, costs and expenses, including attorneys' fees that have been or may be incurred in prosecuting and defending claims arising out of said Project;

(d) interest from July, 1970, the scheduled completion date of the Project;

(e) costs of the proceeding in this Court; and

(f) such other and further relief as may be just and appropriate.

Exhibit D

ANSWER TO AMENDED COMPLAINT

Defendant, The Perkins & Will Partnership, answering the amended complaint of the plaintiff herein, by Bernstein, Weiss, Parter, Coplan & Weinstein and by Hart & Hume, its attorneys, upon information and belief, alleges as follows:

FIRST: Denies the allegations contained in paragraphs numbered "1", "4", "5", "6", "7", "8", "9", "10", "11", "12", "13", "14", "15", "16" and "17" of the amended complaint.

SECOND: Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph numbered "2" of the amended complaint.

THIRD: Denies the allegations contained in paragraph numbered "3" of the amended complaint, except admits that The Perkins & Will Partnership is engaged in the practice of architecture with offices, among other places, in White Plains, New York and New York City, New York.

FURTHER ANSWERING AND AS A FIRST COMPLETE DEFENSE:

FOURTH: The plaintiff is not a real party in interest, nor a proper party to maintain this action, and not all necessary parties have been joined in this action.

FURTHER ANSWERING AND AS A SECOND COMPLETE DEFENSE:

FIFTH: The amended complaint fails to state a claim upon which relief can be granted.

FURTHER ANSWERING AND AS A THIRD COMPLETE DEFENSE:

SIXTH: The purported causes of action alleged

in the amended complaint have not been timely instituted and are barred by the applicable Statutes of Limitations.

FURTHER ANSWERING AND AS A FOURTH COMPLETE DEFENSE:

SEVENTH: The purported causes of action alleged in the amended complaint have not been timely instituted and are barred by laches.

FURTHER ANSWERING AND AS A FIFTH COMPLETE DEFENSE:

EIGHTH: There is no privity between the plaintiff or Walter Kidde Constructors, Incorporated and the answering defendant, and said defendant owes no duty to the plaintiff or Walter Kidde Constructors, Incorporated to act without negligence in its professional performance.

FURTHER ANSWERING AND AS A SIXTH COMPLETE DEFENSE:

NINTH: The plaintiff or Walter Kidde Constructors, Incorporated is not a third-party beneficiary of the contract between the answering defendant and its client and may not assert a claim against said defendant arising out of such contract or otherwise.

FURTHER ANSWERING AND AS A SEVENTH COMPLETE DEFENSE:

TENTH: The answering defendant was at all times mentioned in the amended complaint an agent for a disclosed principal and not subject therefore to the claims of the plaintiff.

FURTHER ANSWERING AND AS AN EIGHTH COMPLETE DEFENSE:

ELEVENTH: The subject matter of the amended complaint and the damages sought therein are the same subject matter

and damages that the plaintiff has asserted through Walter Kidde Constructors, Incorporated in a pending arbitration proceeding instituted against the answering defendant's principal, the Mt. Sinai Hospital of Hartford, Connecticut, and the plaintiff is barred from prosecuting the within action because of a prior proceeding pending, because of its election of remedies and because it is otherwise estopped.

FURTHER ANSWERING AND AS A NINTH COMPLETE DEFENSE:

TWELFTH: The answering defendant, while acting in good faith, in its professional capacity as an architect, and in making decisions, determinations and judgments in connection therewith, is immune from claim or suit against it by the plaintiff.

WHEREFORE, the defendant, The Perkins & Will Partnership, demands that this action be dismissed, with costs.

Ex. E

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the Plaintiff's counsel in writing that we will not make such a motion; the probability being that we will make such a motion, but that will be determined.

BY MR. BERGADANO:

Q Mr. Dornbusch, are you connected in any way with Boise Cascade Corporation?

A No.

Q Do you have any connection whatsoever with Walter Kidde Constructors, Inc?

A No, I do not.

Q Do you have any connection with Ebasco Services?

A No.

MR. WILLENKEN: Off the record.

(Discussion off the record)

Q Mr. Dornbusch, are you an attorney-at-law?

A Yes, I am.

Q Who are you associated with, if anyone?

A I am presently Assistant General Counsel to Teleprompter Corporation.

Q Prior to that?

A Prior to that, I was Assistant General Counsel to Boise Cascade Corporation.

Q Can you tell me, sir, how long you had that

job?

A From May of 1972 until January of 1975.

Q In that capacity, sir, can you give us a brief description of your duties?

A I was one member of what was originally a four-man legal department, located here in New York, that was responsible for all of the legal affairs of Boise Cascade's Engineering and Construction group. That group consisted of Ebasco Services, Chemico Construction Company, Walter Kidde Constructors, W. A. Chester, Inc., and several other engineering and construction-oriented companies.

Q Can you tell me, sir, who the other members of that group of four people were during the time you were there?

A There was an Ecton R. Manning, a David R. Almond, and a Phillipe A. Schreirer.

Q Can you tell me who of that group was General Counsel for Boise Cascade, if anyone?

A Well, Mr. Manning was General Counsel for the Engineering and Construction group. However, he was an Associate General Counsel for Boise Cascade, and reported to Boise Cascade Senior Vice Presidents and General Counsel, whose name is John Clute.

Q Is Mr. Clute located in New York or elsewhere?

A No, he is located in Boise, Idaho.

Q Is that the corporate headquarters?

A Yes, it is.

Q Sir, are you familiar, do you have any knowledge of the acquisition of shares of stock of Walter Kidde Constructors, Inc. -- and who for convenience we will just call "Kidde" -- by Boise Cascade Corporation?

MR. WILLENKEN: May I hand the witness a document; do you have any objection?

MR. BERGADANO: Certainly.

Q (Continuing) First, if you have any knowledge.

A I have some knowledge, and it is Boise acquired Kidde prior to my association with them, but there were occasions when I was called upon to refer back to the acquisition document. And that would appear that in April of 1969, a company called Ebasco Industries, Inc., which was a holding company for all of the Engineering and Construction group companies that I previously identified, was merged into Boise Cascade Corporation, which was the survivor corporation.

Q Were there any documents in connection with that transaction that you have just described?

A Yes, there was an Agreement and Plan of Merger dated April 24, 1969.

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Q Is that the document you are holding in your hand?

A Yes, it is.

MR. BERGANDANO: May we have that marked.

(27-page document was marked as Exhibit AD-1 for identification)

MR. BERGADANO: Mr. Willenken, since we have this document for the first time, and I may want to question on it, and I have not had an opportunity to read it, I will reserve my rights to question on this document until I do get a chance to review it.

MR. WILLENKEN: Do you want to take a recess here for a few minutes?

MR. BERGADANO: No, I would rather continue with the witness as far as we can go, and then perhaps take a break and continue after that, in case there are other documents that have to be reviewed at the same time.

Q Sir, to your knowledge, was this the sole document for the merger of Ebasco Industries, Inc. into Boise Cascade Corporation?

A Well, there was a closing binder. This was the Agreement, the principal agreement, but there were

MR. BERGADANO: And those are the documents I am seeking, Mr. Willenken; the documents that show the actual carrying-out of the Agreement and Plan of Merger.

MR. WILLENKEN: Excuse me. Would you happen to know what those would normally be?

MR. BERGADANO: I have no idea what was done in this case, except as might be reflected in this Agreement which I have not had an opportunity to read; and I certainly don't know what actually was done, since I was not present or a party to any of those transactions.

Q Sir, do you know of your own knowledge whether as a result of that merger the stock of Walter Kidde was transferred?

A I believe it was, but I don't know of my own knowledge. I was not there at the time.

Q Have you reviewed various documents in connection with the planned merger which would give you information as to that subject?

A Generally, yes.

Q Is that what happened, or did something else happen?

A No, Walter Kidde was a wholly-owned subsidiary

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of Boise Cascade Corporation.

Q It became --

A Yes.

Q -- a direct subsidiary of Boise Cascade?

A Yes, that is correct.

Q Do you know, sir, when that took place?

A I do not know for certain. I would have to look at the closing binder, but I believe it was in August of that year; August of 1969.

Q Would that be reflected, to your knowledge, by any of the documents in that so-called bound volume?

A Yes, it should.

MR. BERGADANO: Mr. Willenken, just in case it is not, I certainly want all documents relative to the transfer of stock of Walter Kidde to Boise Cascade, other than the stock certificates themselves, or certificate; whatever it may be.

MR. WILLENKEN: That's pretty broad.

MR. BERGADANO: I am restricting it to the question of the transfer of the stock of Walter Kidde to Boise Cascade, which this witness says he believes is included in the bound volume, but in this case, it is not.

MR. WILLENKEN: You are looking for

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proof of transfer.

MR. BERGADANO: Yes. And if there are any side agreements or other agreements in connection therewith, I want copies of all agreements.

MR. WILLENKEN: I don't know what may exist, as far as proof of transfer. As far as anything else, we will probably give it to you; if we have an objection, we will state it when we see it.

MR. BERGADANO: We want to see, to have, whatever may lead to relevant testimony or discovery relating specifically to, on this deposition, the question of diversity of citizenship.

Q Now, sir, do you know, how long did Boise Cascade own the stock of Walter Kidde?

A Until February 2nd, 1973.

Q Do you know what happened to the stock of Walter Kidde which was owned by Boise Cascade?

A At that time it was sold to A. M. Kinney, Inc., an engineering company with offices in Cincinnatti, Ohio.

Q Do you know, sir, if between August 1969 and February 2nd, 1973 Boise Cascade owned all of the stock, all of the outstanding shares of Walter Kidde?

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A Yes, it did.

Q Do you know, sir, whether there was more than one type of share, one class of shares of Walter Kidde?

A I believe there was only one class of shares.

Q Was that common stock, to the best of your knowledge?

A Yes, it was.

Q There was no preferred stock?

A Not to my knowledge.

Q There was no voting and non-voting stock?

A Not to my knowledge.

MR. BERGADANO: I would like, Mr. Willenken, in the event that there are any documents showing more than one class of stock or more than one type of stock, whatever there is on that subject, which would indicate the type of stock which Walter Kidde had issued; and if it was owned other than by Boise Cascade, from August 1969 on, I would like to know who owned any of the stock, other than Boise Cascade.

MR. WILLENKEN: I believe the witness has testified, but if there is anything that shows otherwise --

MR. BERGADANO: That is exactly what

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I am saying. Otherwise, I assume this witness, as former Assistant Counsel of Boise Cascade, would have knowledge of that subject, and he is testifying from his own knowledge and from documents he reviewed during the time he held that position.

THE WITNESS: Yes.

Q Sir, you said on February 2nd, 1973, Boise Cascade sold the stock of Walter Kidde to the A. M. Kinney Company?

A Yes.

Q Was that pursuant to an agreement?

A Yes, it was.

Q Was that agreement in writing?

A Yes, it was.

MR. BERGADANO: Can we have a copy of that agreement? Mr. Willenken, I want the full copy of the agreement, please.

MR. WILLENKEN: I believe you've got it.

Q Would you look at this, sir, and tell me, please, if that is, to your knowledge, a full and complete copy of the agreement you have referred to?

A Yes, it is.

Q Without deletions or anything else?

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A Yes.

Q I ask you to look at the whole thing.

A (Refers) Yes, it is complete.

MR. BERGADANO: I ask this be marked for identification.

(14-page document was marked as Exhibit AD-2 for identification)

Q Do you know, sir, whether aside from Boise Cascade and A. M. Kinney, Inc there was any other party to this Agreement, which seems to recite the agreement as being solely between those two parties?

A That is correct. It was solely between those two parties.

Q Do you know, sir, whether there was any agreement between Walter Kidde and A. M. Kinney, other than this document, relating to the matters involved in this Agreement, now AD-2?

A There was no such agreement.

Q Agreement or any other document?

A Other document, no.

Q Were there any other agreements or documents between Walter Kidde and Boise Cascade referring to the matters which are involved in Exhibit AD-2?

A There may have been. There may have been some internal memoranda regarding the decision to sell the

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company. I don't recall specifically if there were.

MR. BERGADANO: And I will call for the production of those documents.

MR. WILLENKEN: If they relate solely to the decision to sell, I don't see they are related to the diversity question, but we will have to look at them and see.

MR. BERGADANO: Mr. Dornbusch naturally is not trying to state other than his present recollection, and as a lawyer, carefully, he is saying what he believes they were; and, of course, like all of us, his memory may not be perfect. I am not faulting him for it if it should turn out not to be perfect.

Q You said, sir, as far as you may recall, there may have been some internal memoranda concerning the decision to sell the stock. Were there any other legal documents? And as a lawyer, I think you know what I am referring to.

A Yes. No, there were not.

Q Were there any other legal documents in connection with the sale which is referred to in this Agreement, AD-2, other than the physical transfer or the legal transfer, I should say, of the stock of Walter Kidde to the A. M. Kinney Company?

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A No, there were not. Oh, wait -- may I correct that answer?

Q Please do.

A I think there was a letter agreement, regarding a temporary lease of office space between Kinney and -- well, between either Kinney and Kidde, and Boise Cascade. We did have an interim agreement wherein they were allowed to use a portion of the existing Kidde offices, which were leased by Boise Cascade. And I believe that that was in writing.

Q Aside from that, sir, do you know of any other agreement, or were there any other legal documents in connection with the matters involved in the Agreement which has now been marked as AD-2?

MR. WILLENKEN: Excuse me. I think we all understand what you mean, but I have to object to the form of the question, simply because at some future point we could get into an argument over what is a legal document. Our intentions are not to do that, but just so --

MR. BERGADANO: When I say "legal document," I think we all understand I am not talking about a simple internal memorandum, but something that has binding legal effect

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on one or more parties, executed by the party or parties involved. And with that definition, I think you understand clearly what I mean.

A No, there were no other legal documents, as defined.

Q Were there ever any assignments, to your knowledge, of anything between Walter Kidde and Boise Cascade?

MR. WILLENKEN: You are referring now to --

MR. BERGADANO: Talking about an assignment, as that is commonly understood among lawyers.

A No.

Q Were there any transfers made by Walter Kidde?

A I'm not sure I understand what you mean by a transfer.

Q Well, other than by legal assignment, physical transfer, something less than a formal assignment of a document of any of Walter Kidde assets, claims, or anything of that nature. And I am speaking -- well, first let's keep it broad, and then I will narrow it.

A Well, other than is defined in the Agreement which we produced, the February 2nd Agreement, there were none.

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Q Up to the present time, or at least up to the time you left?

A That is correct.

Q And I believe that was in 1975?

A Yes, in January of '75.

MR. BERGADANO: Mr. Willenken, if there are any such documents, since I asked of the witness' knowledge and he may not have knowledge, I ask for the production of those documents; or, if there are none, I would like a statement in writing by counsel to the effect that there are no other documents and no assignments; and specifically assignment of any claims or choses in action which Walter Kidde had against anyone; and even more specifically as relates to the matters in issue in this case.

I would like to get either the documents or the written statement that there are no such documents as soon as possible in a reasonable way.

MR. WILLENKEN: Sure.

MR. BERGADANO: Keeping in mind that the Judge gave us only until March 1st.

MR. WILLENKEN: I understand. No

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this action.

MR. WILLENKEN: I don't see how that would be relevant, but we'll take a look and see what we can find that might be relevant in the slightest or refer to the diversity question, or the matter of who owns the claim.

MR. BERGADANO: And anything that might lead to anything that is relevant in accordance with the Federal Rules in cases concerning discovery in Federal actions, or actions in Federal Courts.

Q Do you know, sir, whether the Board of Directors and each member thereof tendered his resignation at or about the time of closing; and when I say Board of Directors, I am talking about Walter Kidde?

A Yes, I do know the resignations were all resignated and I was responsible for collecting them all.

Q Were they directed to the Kinney Company?

A Yes, they were.

Q Do you know if those resignations were accepted by the Kinney Company?

A I don't know.

Q Do you know, sir, whether any new directors were elected or appointed for Walter Kidde?

A I don't know.

MR. BERGADANO: Mr. Willenken, can you ascertain that?

MR. WILLENKEN: I certainly can.

Q Do you know, Mr. Dornbusch, whether there were any Resolutions by the Board of Directors of Walter Kidde before or after February 2, 1973 which in any way related to any claim or claims which Walter Kidde had or claimed that it had, in connection with the job known as the Mt. Sinai Hospital of Hartford, Connecticut?

A Yes, I am aware of at least two Resolutions subsequent to February 2, 1973, that would have pertained to that claim, along with other claims.

Q Do you know what those Resolutions were, the substance?

A There was a Resolution, I believe it was passed late in 1973, making me a Vice President of the corporation for certain limited purposes, one of which was to take care of the claims that were referred to in the Purchase Agreement. And then there was a subsequent Resolution upon my leaving Boise Cascade, giving the same title and responsibilities to the person who relieved me of those duties, an attorney named Tom Gonser in Boise, Idaho.

MR. BERGADANO: Mr. Willenken, I call for the production of those Minutes along with

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responsibilities that remained Boise's concern under this February 2nd Agreement; that the Resolution electing me Vice President was so limited it probably referred to the particular paragraph in the February 2nd Agreement.

Q Did you handle some of the legal aspects of Walter Kidde in connection with this transaction referred to in Exhibit AD-2?

MR. WILLENKEN: Are you talking now just about participation of some sort in the sale?

MR. BERGADANO: In his capacity as Assistant General Counsel and as a lawyer.

A Yes, I did.

Q Do you know, sir, whether Walter Kidde was a New York corporation at all times?

A Yes.

Q Do you know, sir, to the extent of your last knowledge, whether Walter Kidde continued legally as a corporation?

A Yes, I believe it did.

Q It was not dissolved legally?

A Not to my knowledge.

Q Do you know whether it is still a legal entity to this day? Of course, I understand I am asking you something after you left, and I understand also I am

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calling for a legal conclusion.

A I have no information to the contrary, no.

Q Do you know, sir, who the Directors of Walter Kidde were subsequent to February 2, 1973?

A No, I do not.

Q Do you know who the officers of that company were subsequent to that date?

A I don't know all of them. I know that a Mr. Walter Connolly remained as either a Vice President of Kidde, or a Senior Vice President of Kidde. And that at one point in time, subsequent to February 2, 1973, a Joseph R. Healey was appointed Vice President of Kidde.

Q Do you know whether Walter Kidde had a President from and after February 2, 1973; someone filling that o :?

A I believe they did, but I'm not certain.

MR. BERGADANO: Mr. Willenken, I would like from you or counsel for the Plaintiff a statement in writing as to who the President and officers of Walter Kiddo were from and after February 2, 1973.

MR. WILLENKEN: Well, to the extent we have that information.

MR. BERGADANO: Of course.

MR. WILLENKEN: I will be glad to give

is limited to Mr. Dornbusch's experience. We are not making a representation that either Boise or Kidde always used that system.

MR. BERGADANO: No, except --

MR. WILLENKEN: It may well have.

MR. BERGADANO: -- except to the extent you recall Mr. Sawyer said that was their normal practice, to save other types of copying, which would appear to be a sensible practice, or their practice. And whatever the document shows will show, of course.

THE WITNESS: My secretary does not like carbon paper.

Q Do you recall, sir, when you were appointed Vice President of Walter Kidde, as you have testified to, or approximately?

A Approximately it would have been late -- well, either late '73 or very early in '74.

Q Other than the people that you have mentioned as being officers of Walter Kidde, from and after February 2, 1973, do you know the names of any other officers?

A No, I don't.

Q Do you know, sir, whether there were in fact any other officers other than those you previously mentioned, from and after February 2, 1973? And, of course,

I am speaking of Walter Kidde.

A I don't know. I would think that there were, but I really don't have any knowledge. Oh, wait -- as I think about it. The Resolution that I received was Certified to by a corporate secretary, whose name I believe was -- I believe it was a woman, whose last name was Reuters, something like the news service, and whose first initial was probably an M.

Q Do you know, sir, whether Ms. Reuters was in Cincinnatti or elsewhere?

A Yes, in Cincinnatti.

Q Do you know, sir, whether at any time other than as may be reflected by that correspondence which you mentioned before, Boise Cascade ever made a claim against The Perkins and Will Partnership arising out of the Mt. Sinai Hospital job in Hartford, Connecticut; other than this one?

A Other than the lawsuit and the correspondence that I have referred to earlier, I'm not aware of any.

MR. BERGADANO: Mr. Willenken, if there is any such document or documents, I ask for the production of those documents.

So we are clear, there are two categories, and I think you understand: one is any claims asserted by Walter Kidde directly

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against The Perkins and Will Partnership, arising out of the Mt. Sinai job; and the other category is any claim or claims asserted by Boise Cascade against The Perkins and Will Partnership, arising out of that job or in connection with that job; other than this lawsuit.

And so we don't have any disagreements as to what I mean, I am not talking about the claims made by Walter Kidde against the Mt. Sinai Hospital directly. I am talking about direct claim against The Perkins and Will Partnership.

Q Do you know, sir, whether Walter Kidde at any time delivered any powers of attorney to anyone to prosecute any claims on its behalf arising out of the Mt. Sinai Hospital job?

A I don't know.

MR. BERGADANO: Mr. Willenken, if there are any such powers of attorney -- and Mr. Dornbusch, just so we will make it as broad as we can -- any memoranda or letters of authority, or anything in writing, authorizing anyone else other than Walter Kidde to prosecute any claims which Walter Kidde had,

or claimed that it had, arising out of the Mt. Sinai Hospital job. And, Mr. Willenken, I ask for the production of any such documents.

MR. WILLENKEN: All right.

Q Sir, do you know whether Boise Cascade has prosecuted any claims which Walter Kidde had in connection with any of the jobs referred to in Exhibit AD-2 in the name of Walter Kidde?

MR. WILLENKEN: I'm not sure I understand the question.

MR. BERCADANO: There are at least two references in Exhibit AD-2, one of which is contained on page 7, Paragraph 11, which states in part: "All existing and future claims by and against Kidde arising out of the work performed by Kidde and/or its subsidiaries and joint ventures, prior to the time of closing of the sale; and all existing and future claims and assessments against Kidde." And I will skip down a little bit -- I'll just read the whole thing and make it simple.

"The following assessments against Kidde in any manner or for any cause arising out of the business, affairs, and operations of the business of Kidde and/or its

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subsidiaries and joint ventures --

MR. WILLENKEN: Excuse me, but I understand what you're referring to. My problem is was the question directed -- perhaps it is just a matter of asking two questions: Were any claims prosecuted? Is that what you are asking?

MR. BERGADANO: Yes.

MR. WILLENKEN: Or if they were, in whose name were they prosecuted.

MR. BERGADANO: So we have the reference, in at least two places in Exhibit AD-2 it states all claims by and against Kidde shall be prosecuted or defended in the name of Kidde. In other words, "in the name of Kidde," is an exact quote.

And my question to Mr. Dornbusch is does he know of any claims of Kidde referred to in Exhibit AD-2 which Boise Cascade prosecuted in the name of Kidde?

MR. WILLENKEN: I will let the witness answer but I object to the form.

A Yes, I do.

Q Can you describe them for us, and tell us what they are?

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A I can't tell you for sure which ones were prosecuted in that name, but I know there were some prosecuted in the name of Kidde.

Q Are there any documents, to your knowledge, concerning this subject matter?

A Well, there is a file on most of those claims. Most of those claims became lawsuits or arbitrations, as the case may be; and there is, you know, a fairly extensive file on each one. I can tell you what our policy was, if that's helpful.

Q Tell us what you can on the subject, and I will put my request for documents on the record.

A Generally, it was our policy to use Boise's name in lawsuits whenever it was legally permissible to do that. That was part of an informal understanding we had with Mr. Kinney; that is, although we had the legal right to use the Kidde corporate name where it was required that we do so to prosecute the litigation, or to defend litigation against the company, we would use the Boise name whenever possible so as to minimize the effects on goodwill of Walter Kidde.

Q Was that both for the prosecution of claims and the defense of claims as relates to Walter Kidde?

A Yes. To the extent that we had any control over defense. Uusually the plaintiff would name one or the

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other. Sometimes they would name both.

Q You use the expresion, "legally permissible" in your answer as to prosecuting claims of Kidde in the name of Boise Cascade. Can you tell us what yuu mean by that phrase?

A Well, for example, most of the claims were contract claims and if there was a prohibition on assignment of the contract, rather than get into that kind of a problem that would not be related to the merits of the claim itself, we would just bring the claim in the name of Kidde. If, on the other hand, the contract could be assigned, or they were silent on it, we would probably style the action "Boise Cascade Corporation, successor in interests to Walter Kidde Constructors," versus whoever the defendant would be.

Q Do you know, sir, of your own knowledge, whether there was any prohibition in the contract documents relating to the Mt. Sinai job inasfar as Walter Kidde was concerned, prohibiting assignment of that contract or anything in connection with that contract?

A I'd have to refer to the contract itself. As I recall, it was a very voluminous contract.

Q Well, sir, I will show you a portion of the General Conditions, which were previously marked as Exhibit AS-3 on the exmination of Mr. Sawyer in this

in case I didn't. If it's a repeated item, it will be covered by the prior one. If it's not, then I call for those documents.

Q Sir, do you know whether at any time, before or after February 2, 1973, Walter Kidde ever authorized or approved the prosecution of any claims which Walter Kidde had in the name of any other party, whether it be Boise Cascade or anyone else?

A Oh, I was trying to get the difference between that and the first question.

Q This is inclusive of Boise Cascade, but not limited to Boise Cascade, as was my prior question.

A I'm not aware of any.

MR. BERGADANO: If there are any such documents, Mr. Willenken, I call for their production.

MR. WILLENKEN: To the extent that we would have them.

MR. BERGADANO: To the extent they are available to the Plaintiff, whether in its possession and control or available to it.

Q Do you know, sir, whether at any time Walter Kidde executed or caused to be executed any document agreeing to the provisions of this Agreement, Exhibit

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AD-2, insofar as it refers to any claims by or against Walter Kidde?

MR. WILLENKEN: I have to object to the form again. We are getting into sort of a fuzzy area here as to -- and I don't want to -- whether or not the approval of the parent companies is the approval of Kidde. I don't mean to argue it one way or the other.

MR. BERGADANO: We understand that's a legal issue.

MR. WILLENKEN: Okay.

(Pending question was read back by the reporter)

A I don't know.

MR. BERGADANO: Mr. Willenken, if there are any such documents, I call for their production.

MR. WILLENKEN: Yes.

Q Do you know, sir, whether Walter Kidde at any time joined in this Agreement, Exhibit AD-2?

A I know for a fact that they did not while they were -- I know for a fact they did not prior to February 2, 1973. I don't know what might have been done internally with that company after that date.

Q To your knowledge, sir, was any document

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of that nature ever given to Boise Cascade by or on behalf of Walter Kidde?

A No.

Q "No" you don't know?

A No, to my knowledge, there was not.

Q To your knowledge, sir, was Boise Cascade at all times a Delaware Corporation?

A Yes.

Q With its principal place of business in Boise, Idaho?

A Yes.

Q And other places of business in various other parts of the country, I assume?

A Yes.

Q Do you know, sir, whether Boise Cascade ever obtained a Certificate from the Secretary of State of the State of New York to do business in the State?

A I don't know.

Q Do you know, sir, what the words used in Exhibit AD-2, "Kidde Folios," followed by a series of Arabic numbers, means?

A Yes; it was Kidde's way of identifying a particular job, when a matter of new business came in to the office, they would open a folio on it; sort of equivalent of saying a file number.

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Q Or job number, or some designation to identify a particular job; is that what you are saying?

A Yes. And they would use that to record the amount of time.

Q Do you know if 1588, Walter Kidde, referred to the Mt. Sinai job in this case?

A Not without looking at the document.

Q If you look at Exhibit AD-2, page 8, Paragraph 12-(a).

A Yes. (Refers) Apparently that was the folio number for the Mt. Sinai Hospital Project.

Q To the best of your recollection, sir, and subject to the writings themselves, do you know what claim or claims, if any, were made in that correspondence that you referred to earlier that you received and sent with respect to The Perkins and Will Partnership and the Mt. Sinai job?

A I really don't have a specific enough recollection to know. I primarily remember sending something to them. I really have virtually no recollection as to the subject matter.

Q Do you recall approximately, sir, when that correspondence took place? Again, subject to the correspondence itself.

A Yes. It would have been some time between June of

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claims with reference to the Mt. Sinai job?

MR. WILLENKEN: I don't understand how this has to do with diversity, even remotely, Mr. Bergadano.

MR. BERGADANO: Kidde is making claims, first of all, as you know. The rule in actions in the Federal Court is that you can have discovery of anything that might even lead to discovery of anything. I am not trying to particularize it as we go along, but first I have to know what the witness knows to find out what there is that leads to diversity. I am not asking about the claims themselves.

MR. WILLENKEN: If you ask the witness what he knows about the claims themselves, you are asking about the claims themselves.

Q Can you tell us what you learned as to who claims were being made against by Walter Kidde arising out of the Mt. Sinai job?

A Yes. The-- Kidde had claims against both the Mt. Sinai Hospital, against The Perkins and Will Partnership; against a prior -- a contractor who had done some previous work on the site before Kidde arrived. I think those were the three parties that Kidde had direct claims against as a result of the project. As opposed to counter-

claims against subcontractors, or various specific phases of the work.

Q Limiting yourself, sir, to claims by Walter Kidde against the architects, The Perkins and Will Partnership, were there any documents that you saw or had which asserted a direct claim by Walter Kidde against The Perkins and Will Partnership arising out of the Mt. Sinai job?

MR. WILLENKEN: We have been over this before, I think.

MR. BERGADANO: He has now stated they had three categories of claims.

MR. WILLENKEN: You asked before for any documents, --

MR. BERGADANO: Now he testified he knows of three different kinds of claims and I am restricting it. The witness testified there were claims against the architects, The Perkins and Will Partnership.

MR. WILLENKEN: I think you asked for documents of that nature.

MR. BERGADANO: Yes, but now he testified he has some knowledge.

MR. COPLAN: He is also talking about a different period of time. Now he is talking

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about 1972.

THE WITNESS: When I first learned.

MR. WILLENKEN: All right. Fine.

Q Can you tell us about that subject, Mr. Dornbusch?

A Well, even beginning back in May or June of '72, there was already a fairly voluminous file on this subject, and it wasn't broken down as I have just described it. That was my own breakdown in my mind as to the three categories of parties. But interspersed within the same memorandum, there would be references, usually to both Perkins and Will and the Hospital, and sometimes also to this third party, this contractor who had done some site work.

Q Do you recall seeing any document or documents which related to any claim or claims specifically by Walter Kidde against The Perkins and Will Partnership, direct claims between those two parties, going from Walter Kidde against The Perkins and Will Partnership?

A Yes. There were many documents. You know, I can't -- I can't recall any specific document.

MR. WILLENKEN: We have a problem with interpretation again. Do you mean documents which Kidde perhaps wrote or delivered to Perkins and Will?

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Q Any documents which assert a direct claim by Walter Kidde against The Perkins and Will Partnership, as opposed to any documents which refer to claims against the Hospital with the architects as the Hospital's representative.

A There were such documents. I know a number of them would have been correspondence between either people at Kidde, or between my office and our counsel. But -- and the two subjects would usually be discussed in the same document; but it was always from the very beginning our understanding that we had claims against both the architect, as architect, and the architect as representative of the Hospital, and the Hospital itself.

Q Do you know how far back those documents extended, starting from the time you went to work, as you say, in 1972?

A They existed at that time. I'm not sure just when the claims were first made. My best recollection is that it was shortly after the project got underway. And I guess that date is --

MR. BERGADANO: I believe I have covered that before, but I want any documents testified to which would indicate a direct claim by Walter Kidde against The Perkins and Will Partnership arising out of the

is one class.

MR. BERGADANO: You represent that?

MR. WILLENKEN: That is what we found. I have no personal knowledge other than we checked and that was what we found.

Q Your testimony was to your recollection there was only one class of stock of Walter Kidde?

A That is correct, yes.

Q And that all of the issued and outstanding shares of stock, other than possibly Treasury stock, was owned by Boise Cascade?

A That is correct, yes.

Q Up until February 2, 1973?

A Yes.

Q At which time that stock, all of it, except the Treasury stock, was sold to A. M. Kinney; correct?

A Well, the entire company was sold to A. M. Kinney, and it would have included Treasury stock, if any.

Q The Agreement as to between those companies is marked Exhibit AD-2?

A Yes.

Q And, of course, it speaks for itself as to what was sold?

A Yes.

MR. BERGADANO: The fourth category, Mr. Willenken, any documents, internal memoranda, regarding the decision to sell the company; the company being Walter Kidde. Do you have any such documents?

MR. WILLENKEN: No. We have not found any, other than, of course, the Agreement that you have seen. I don't know if you call that internal documents, what-not.

MR. BERGADANO: You are not saying there were none; you are merely saying you have found none?

MR. WILLENKEN: I am saying we looked and we could not find any. That's what I am saying. Other than anything which we are presenting to you, and I don't think anything of that falls in that category; but if it does --

MR. BERGADANO: We will pass that for a moment.

The next is documents or statements in writing by counsel to the effect there are no other documents and no assignments of any claims, which claims or choses in action Walter Kidde had against anyone; and more

specifically as it relates to matters in this case.

MR. WILLENKEN: Again, having looked and made a search, and having had Boise Cascade make a search, I know of no document which indicates an assignment by Kidde to Boise of any claim other than anything that you might have.

MR. BERGADANO: When you say might have, you are talking about Exhibits AD-1, AD-2?

MR. WILLENKEN: What I am doing is I am trying not to characterize.

MR. BERGADANO: I understand that. But you mean other than has been presented on the examination of Mr. Dornbusch?

MR. WILLENKEN: That's correct. Other than anything to that effect, which you may or may not characterize that way; and I don't really want to get into it for the purposes of discovery. We have found no assignment.

MR. BERGADANO: By Kidde to anyone?

MR. WILLENKEN: By Kidde to anyone.

Now, what they may have done that we don't know about that may have or may not

Q Sir, how long were you a Director of Walter Kidde Constructors, Inc.

A I don't recall because I'm not sure when I was elected, but --

Q How long after the date of this meeting, February 2, 1973?

A I would think that I resigned immediately thereafter.

Q There is an undated resignation among these papers -- I'm sorry -- it's dated February 2, 11:45 P.M. by you.

A That's it.

Q That is your signature on that resignation?

A Yes, it is.

Q As part of Exhibit AD-3, Mr. Dornbusch, there is a copy of a Resolution of Walter Kidde Constructors, Inc., a New York Corporation. Is Walter Kidde Constructors, Inc., the same corporation as Walter Kidde Constructors, Incorporated, spelled out?

A Yes. The new ownership made that name change.

Q It was just a change of name?

A Yes.

Q But both names refer to the same corporate entity, I take it?

A That is correct, yes.

Q This copy of the Resolution is Certified

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by M. L. Ruter. Do you know who Mr. Ruter is or was?

A I believe it's a woman. I believe she's the Corporate Secretary, whom I misidentified the last time as Mrs. Reuters.

Q And she really is part of the Kinney operation, rather than Boise?

A Yes, she has her offices in Cincinnatti. And I have never met the woman.

Q Do you know, sir, how long Mr. Gonser was an officer of Walter Kidde?

A To my best knowledge, he still is. He was elected to replace me when I left Boise's employ in January of '75. And I know that he is still with Boise Cascade Corporation. I assume that -- .

Q My reading of this copy of this Resolution, which is the next-to-the last page of this sheaf of documents marked Exhibit AD-3, caused me to ask whether he was reelected or there was a further Resolution -- or appointed, I should say, as a Vice President; since this Resolution says that in any event, Mr. Gonser under this Resolution was not to serve beyond October 31, 1975.

A I have no knowledge.

Q There is a reference in this Resolution, Mr. Dornbusch, to a letter dated October 28, 1974, signed by Mr. Gonser on behalf of Boise Cascade. Do you have a

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copy of that letter?

A No, I don't.

MR. BERGADANO: Mr. Willenken, it is apparently an indemnity agreement of some kind that is referred to in that Resolution. (Mr. Willenken refers)

THE WITNESS: We don't have that with us. I don't know if we have it or not.

MR. BERGADANO: Could you arrange to get a copy of that for me, since it is apparently Boise's letter, and I assume they would have a copy in their own records.

MR. KINNEY: What is the date of that letter?

MR. BERGADANO: It's referred to in this copy of the Resolution as being dated October 28, 1974, signed by Thomas H. Gonser, as Associate General Counsel and Assistant Secretary of Boise Cascade Corporation. Apparently it's to A. M. Kinney, Inc.

This Resolution says it is to hold Kinney harmless for any liability or loss arising from any acts or omissions by Mr. Gonser as Vice President of Kidde during his tenure as such Vice President.

given to us today by the reporter, an item of any documents in connection with the closing that Mr. Coplan referred to, and you were going to respond to it.

MR. WILLENKEN: The witness was saying off the record that the closing documents that he thought we were referring to previously were the closing documents on the merger.

MR. BERGADANO: Of Ebasco into Boise Cascade?

MR. WILLENKEN: But in any event, it is my understanding that the so-called closing documents -- if that's the appropriate phrase on the sale of Kidde to A. M. Kinney by Boise -- is simply endorsed stock certificates.

MR. BERGADANO: Other than the Agreement AD-2?

MR. WILLENKEN: Right.

MR. COPLAN: Off the record.

(Discussion off the record)

MR. BERGADANO: I think we were off the record, Mr. Willenken, if not, we will simply have a repetition of it, when you handed me the copies of the stock certificates; and I think you indicated -- either on or off

the record before -- that other than AD-2, the only other documents in connection with AD-2 were these two stock certificates, of which you have given me copies. Is that correct?

MR. WILLENKEN: That's correct. And apart from what the witness mentioned, also off the record, as to the resignations which are part of AD-3.

MR. BERGADANO: Right.

MR. WILLENKEN: Yes.

Q I notice, Mr. Dornbusch, there is an assignment on the back of each of these copies of the stock certificates which are, as we call it, signed in blank. Do you know if that was ever filled in above the signatures?

A (Refers) I have never seen a copy that was filled in.

Q Do you know if those certificates were delivered to A. M. Kinney as part of the transaction reflected in Exhibit AD-2?

A Yes, they were.

Q They were physically delivered, I assume?

A Yes.

MR. BERGADANO: Let's have these marked as AD-4(a) and AD-4(b).

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(Stock certificates were marked as Exhibit AD-4(a) and AD-4(b) for identification)

MR. BERGADANO: We were to get a statement, Mr. Willenken, in writing as to who the President and officers of Kidde were from and after February 2, 1973. I take it that would be other than as now reflected in Exhibit AD-3. Could you give me a listing of that?

MR. WILLENKEN: As of January 8, 1975, which is what we have; this gives you that information. Schedule A and B, I think, answers that question, up until that time, at least.

(Mr. Bergadano refers)

MR. BERGADANO: Can we have this letter, dated January 8, 1975, which is two pages, and two schedules as annexed thereto, marked as one Exhibit.

MR. KINNEY: There are two different dates.

MR. BERGADANO: One Schedule A, has the date 5/17/74; the other Schedule A has the words "1973" typed in under the words "Schedule A."

(Two-page letter with two Exhibit A page attachments was marked as Exhibit AD-5 for identification.)

Q Mr. Dornbusch, looking at Exhibit AD-4, the copies of the two stock certificates, I notice that one certificate, which is for 17,380 shares of capital stock, is dated October 20, 1969. Is that when Boise Cascade first became an owner of the stock of Walter Kidde Constructors, to your knowledge?

A Well, the merger of Ebasco into Boise was accomplished in August of 1969. And apparently this would appear to be the first stock which Boise acquired, yes.

Q This other certificate, AD-4(b) is for 275 shares -- and incidentally, the first certificate has Number 154; this second certificate I am referring to is Number 155 -- and this one is dated June 18, 1971. Can you tell me how that came about, if you know?

A I don't know.

Q Do you know why they issued another 275 shares to Boise Cascade?

A No.

Q You made reference the last time to some correspondence, Mr. Dornbusch. Were you able to locate that correspondence which had to do with the assertion of any claims on the part of Walter Kidde against The

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Perkins & Will Partnership arising out of the Mt. Sinai job. You said you had some personal files.

A I recall having assigned some letters to The Perkins and Will Partnership in 1973, and I did search my personal correspondence file, and I found some letters.

MR. BERGADANO: Mr. Willenken, do you have copies of the correspondence?

MR. WILLENKEN: I am giving you -- we are trying to comply in the broadest sense. It's not very clear what is a claim and what is not a claim. In the broadest sense, we are giving you these. These are not all Mr. Dornbusch's letters, but you can question him on those.

(Mr. Bergadano refers)

MR. WILLENKEN: Also, you might or might not want to take a look at that (indicating).

(Mr. Bergadano refers)

MR. BERGADANO: Is that all one document, Mr. Willenken?

MR. WILLENKEN: Yes, that's one document.

MR. BERGADANO: Are you contending that this is a claim against --

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MR. WILLENKEN: I am trying to avoid contending what is a claim and what is not a claim, and what is against whom and by whom, and trying to give you anything that may or may not fit into what you have requested. If it's an issue, we can argue about it later; if it's not an issue, we are giving you the documents and we don't have to get involved in characterizing them.

MR. COPLAN: Off the record.

(Discussion off the record)

MR. WILLENKEN: While you are looking at those, these are other documents that may or may not be considered claims.

MR. BERGADANO: By Kidde against the Defendants in this case; that's all I'm talking about. I am not talking about things that were clearly claims by Kidde against the owner.

MR. WILLENKEN: Without trying to fight the battle now, I don't know that those documents you are looking at, whatever they may be, are by Kidde as opposed to by Boise.

MR. BERGADANO: First I say by Kidde,

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and then I also say by Boise against the architects, and we know that's the Defendant.

MR. WILLENKEN: I appreciate what you are looking for, but I don't know that there is a distinction. You may argue there is a distinction if you like, but those are the documents. And here are also the documents (indicating); these are the documents which one may or may not refer to as claims. Whether or not they are by Kidde or by Boise, or by both, is a distinction that --

MR. KINNEY: These documents certainly refer to the architect.

MR. BERGADANO: They can refer to the architect all over the place, but that does not make them a claim.

MR. KINNEY: They were also given to the architect.

MR. BERGADANO: That still doesn't make them a claim against the architect.

MR. WILLENKEN: We are trying to give you discovery; we are not trying to make arguments now.

MR. COPLAN: Off the record.

(Discussion off the record)

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MR. BERGADANO: You have given me a group of papers, consisting of copies of various letters, which I will subsequently identify for the record.

MR. WILLENKEN: Do you want to put them in one package and have them marked?

MR. BERGADANO: Yes, let's make them one Exhibit, with subdivisions a, b, c following the number of these, AD-6 through whatever letter. I am excluding the copy of the letter.

You are handing me a copy of a letter dated July 6, 1973, from Kidde to the architect, as part of my request for documents, I take it?

MR. WILLENKEN: Yes.

MR. BERGADANO: Please mark these and I will then read in a description into the record, so we will be able to identify the letters.

(13 letters were marked as Exhibit AD-6(a) through (m) inclusive for identification)

MR. BERGADANO: For the record, these are all part of Exhibit AD-6, with sub-letters. I will just identify them by the sub-letters.

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Sawyer, Senior Vice President.

Q Mr. Dornbusch, do you know who Mr. Hansen was, Emil Hansen, Jr., whose name is on some of these letters and below whose name the word "superintendent" appears?

A I believe he was Kidde's Project Manager for the Mt. Sinai Hospital Project.

Q There are among subdivisions of this Exhibit copies of four letters which either bear your signature or have your name typed on them. Are these four letters -- and specifically, Exhibit AD-6(g), (h), (i) and (j) -- which are the ones I am referring to -- are those the letters you were referring to on Monday when we were taking your testimony at that time?

A (Refers)

MR. WILLENKEN: I am not clear on the question.

MR. BERGADANO: You recall --

MR. WILLENKEN: I don't remember exactly what the reference is, is the problem.

MR. BERGADANO: There was a question -- the area involved was in line with my questions as to whether to his knowledge Kidde had ever made claim directly against the architects. And he said he didn't know

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if there was a claim, but he did recall certain correspondence, some of which he signed. And I am asking if this is the correspondence to which he was referring.

MR. WILLENKEN: I am objecting to the form of the question, and I will explain. You asked him whether Boise had made a claim.

MR. BERGADANO: Yes, but now we are staying in the area of Kidde. If you want me to include both, fine, but I will take it one at a time, and that way we won't have it confused.

A These were the letters that I was referring to, yes.

Q Do you know, sir, whether there were any other letters in addition to the four you are looking at now?

A I don't believe so.

MR. BERGADANO: Mr. Willenken, is this letter, which is marked Exhibit AD-6(1), dated September 11, 1973, being submitted in connection with any claim being made by Walter Kidde against the architects for any claim having been made previous to the commencement of this action by Boise Cascade against

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MR. BERGADANO: Any powers of attorney to anyone to prosecute any claims, on its behalf, I believe we are talking about Walter Kidde, arising out of the Mt. Sinai job?

MR. WILLENKEN: No.

MR. BERGADANO: There are none?

MR. WILLENKEN: There are none. Well, let me say again, we have searched and there are none. I have no personal knowledge.

Q I believe you said last time, Mr. Dornbusch, there were no powers of attorney?

A That is correct.

Q Relating to that subject matter?

A Yes.

MR. BERGADANO: And further in that same area, any memoranda or letters of authority, or anything else in writing authorizing anyone else, or Walter Kidde, to prosecute any claims which Walter Kidde had arising out of the Mt. Sinai job?

MR. WILLENKEN: No, nothing other than what we have given you.

Q I think you said, Mr. Dornbusch, to your knowledge, there were no such claims?

A That's correct.

MR. WILLENKEN: Of course, other than what may or may not be the effect of the Salo Agreement.

MR. BERGADANO: Referring to AD-2.

We ask for the file which Mr. Dornbusch referred to the other day in his testimony, relating to the prosecution of claims referred to in Exhibit AD-2 by Boise, either in its own name or in the name of Walter Kidde.

MR. WILLENKEN: I have my own notes on that which were different, as to what you were asking for. But in any event, we made a review in conjunction with Boise, and under any claims, whatever that may mean, any litigations or arbitrations, what-not, in matters referred to in that Agreement, apart from the present one, are being prosecuted in the name of Kidde, Walter Kidde Constructors; what I had thought you were asking for was anything that shows any such litigation, arbitration and so on, that's either being prosecuted or defended in the name of Bosie. Now I don't know. I think that that representation ought to be sufficient for your

needs. If you want some --

MR. BERGADANO: Is what you are saying, and is my understanding of what you are saying correct, that whatever claims were made by Kidde or claims against Kidde which were being defended or prosecuted, whether by Boise or Kidde directly, were all in the name of Kidde; is that correct? Not by Boise or in Boise's name -- not as Boise as successor or in Boise's direct name?

MR. WILLENKEN: If I understand you right, the answer is yes. I just want to make sure.

MR. BERGADANO. I would like to get it clear on the record that we are both saying the same thing. And perhaps maybe I had better word it a little more carefully, so we both know what we are talking about and it is accurate.

Is what you are saying, Mr. Willenken, that all claims prosecuted by Kidde, or on Kidde's behalf, which are referred to in Exhibit AD-2, are being prosecuted in the name of Walter Kidde?

MR. WILLENKEN: Well, now, we've got

a problem with the words. By Kidde or on Kidde's behalf -- according to the Agreement, they are not, certainly not on Kidde's behalf.

Let's be specific and I think I can answer the question. (Refers) All right. Let me put it this way on the record:

All actions, proceedings, arbitrations, litigations, arising out of work performed by Kidde prior to February 2, 1973 are --

MR. BERGADANO: Off the record.

(Discussion off the record)

MR. WILLENKEN: (Continuing) -- 1973, are in the name of Kidde and not in the name of Boise, except for this one.

MR. BERGADANO: "This one" being the case in which we are taking this deposition?

MR. WILLENKEN: Correct.

MR BERGADANO: Mr. Dornbusch, if you know, or Mr. Willenken, if you will make the statement on behalf of the Plaintiff, as to how many such claims are being prosecuted in the name of Walter Kidde?

MR. WILLENKEN: I don't know the exact number; two or three.

THE WITNESS: I don't know the exact number either, but it's more than that.

MR. WILLENKEN: The subcontractor -- apart from the subcontractor claims.

MR. BERGADANO: Talking about the claim in Connecticut.

MR. WILLENKEN: Two or three, apart from anything arising out of this project, as far as I know, but I can't guarantee that.

MR. BERGADANO: They are all in the name of Walter Kidde Constructors, Inc., or whatever the corporate name was at the time? And we are referring to the same corporate entity, whatever the name?

MR. WILLENKEN: Yes.

MR. BERGADANO: Because we know they have changed the corporate name at least once or maybe more than once.

MR. WILLENKEN: Correct.

Q Do those claims include the claim which is in arbitration before the American Arbitration Association, in which Walter Kidde has made claim against the Mt. Sinai Hospital, et cetera?

A Yes.

MR. COPLAN: Off the record.

(Discussion off the record)

MR. WILLENKEN: As I said before, it did not include that, but the one before the American Arbitration Association is in the name of Walter Kidde Constructors.

THE WITNESS: There is actually more than that; more than two or three claims that are being either prosecuted or defended.

MR. BERGADANO: We are talking now about prosecuted.

THE WITNESS: Oh, prosecuted.

Q Can you tell me, gentlemen, either of you, and I accept the answer of either of you, the representation by the counsel and you as the witness, Mr. Dornbusch, if you know, what courts or what forums those claims are pending in?

A Do you want me to answer?

Q To the best of your knowledge.

A I know that there are actions -- oh, this is only where Kidde is the Plaintiff?

Q Plaintiff or Claimant, as the case may be.

A There is a claim against the Army Corps of Engineers. There is a --

Q Is that an administrative claim against one of the Federal Administrative --

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A As far as I know, but the last knowledge I had, they were ready to go to court, and are probably in the Court of Claims in Washington.

There is -- there is an action in the Supreme Court of the State of New York, New York County, by the Dormitory Authority of the State of New York, in which Kidde was named as a party, and has named other parties as cross-defendants or fourth- or fifth-party defendants.

Q That has to do, I believe, with the Physical Education, or some-such building, at the CCNY Uptown Campus?

A Yes. There is a separate action in which the last I heard was not consolidated with that action, in which Kidde is suing the Dormitory Authority to recover unpaid funds on the same project.

Q I think that has now been consolidated. There are about five actions.

A I'm not surprised. Then there is an action --

MR. BERGADANO: I will answer in that one as a fifth party or fourth party.

MR. WILLENKEN: You probably have more information about these suits than we do.

MR. BERGADANO: That I do because we personally handle it.

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A (Continuing) There is a claim involving a joint venture, of which Kidde owns fifty percent, against the State of Connecticut, which may or may not have reached a tribunal at this time.

There is a claim --

Q Do you know who the other joint venture was?

A The other joint venture was the Frank Briscoe Construction Company in New Jersey.

Q I believe that is referred to in Exhibit AD-2, that joint venture?

A Yes, it is. There is a claim in Los Angeles in which Kidde has sued the County Board of Retirement as the owner on a project that Kidde built there. I believe that's in the State Courts.

There may be other claims. If you would like me to refer to Exhibit AD-2, I could perhaps --

Q Please do.

A (Refers) Those are the only claims that I am aware of.

Q Do you know, Mr. Dornbusch, why those claims or actions were brought in the name of Walter Kidde?

A I believe that they all are claims under construction contracts which, probably the contract either expressly prohibited assignment of the contract, or any

claims under it; or by implication, under applicable law, it would be arguable that such a prohibition would apply. So that we use the right conferred by Exhibit AD-2 to use Kidde's name in suit. In some cases, the suit may actually have been brought prior to February 2, 1973.

MR. BERGADANO: Another category, Mr. Willenken, was any documents authorizing Boise to prosecute any of the Kidde claims in the name of Boise Cascade. Are there any such documents?

MR. WILLENKEN: I understand. On the record, can we assume that anything you are asking now is apart from anything we have already given you here?

MR. BERGADANO: Yes.

MR. WILLENKEN: No, there is none that we know of, and we looked.

MR. BERGADANO: I think I left out what is on this list -- Or any claims which Walter Kidde claimed to have -- which is part of that same question.

MR. WILLENKEN: Same answer.

MR. BERGADANO: The next category is any documents before or after February 2, 1973, whereby Kidde ever authorized or approved the

prosecution of any claims which Kidde had in the name of any other party, whether it was Boise Cascade or anyone else. I worded that one badly, but I think you know what we mean.

MR. WILLENKEN: I am sure I understand you. And again, the same answer.

MR. BERGADANO: There are no documents other than what may be cov ered by the documents produced to date in this deposition?

MR. WILLENKEN: To the best of our knowledge and investigation.

MR. BERGADANO: The last category of documents that we requested were any documents Kidde executed or caused to be executed agreeing to the provisions of Exhibit AD-2, insofar as it refers to any claims by or against Kidde.

MR. WILLENKEN: Let's go off the record.

(Discussion off the record)

MR. WILLENKEN: No. There are none as far as I know, other than what may or may not be inferred.

MR. BERGADANO: From what has already been marked as Exhibits on Mr. Dornbusch's deposition.

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MR. WILLENKEN: Right.

MR. KINNEY: Off the record.

(Discussion off the record)

Q Mr. Dornbusch, to your knowledge, sir, were there any documents or document executed by Kidde authorizing Boise Cascade to prosecute any claims which Kidde had in the name of Boise Cascade?

A No.

Q You mean no, there were no documents, or no, you don't know?

A No, to my knowledge there were no documents. I don't believe there would be, because we wouldn't have asked them. We wouldn't have felt that that was the kind of thing that we needed their consent for.

Q In Exhibit AD-2, there are certain references that the net proceeds of any claims which Kidde had, which were prosecuted, would be shared after taxes --

MR. WILLENKEN: Shared?

Q (Continuing) -- as provided in the Agreement.

A I think there is one specific claim that it was to be divvied up.

MR. BERGADANO: Off the record.

(Discussion off the record)

MR. WILLENKEN: On the record, that

has nothing to do with this matter.

MR. BERGADANO: I am referring to the bottom of page 7 of Exhibit AD-2, under the Paragraph numbered 11, and the last line starting with a new sentence says, "The seller shall be entitled to all net and after-tax proceeds from said claims," and goes on to talk about liability in the event of damages assessed against Kidde in connection with said claims.

Q My question to you, sir, is was it intended by that that Kidde would pay the taxes on whatever recoveries there were, since it refers to after taxes, the net proceeds after taxes?

A (Refers) Well, it was -- what was meant by that language was that any recovery, the tax money would be paid from it before Boise took the money, Boise would -- I mean, Boise would receive a check -- it may or may not have been made payable to Kidde -- but someone with authority to do so, myself, before me, it would be Messrs. Sawyer or Pett, would have endorsed the check over to Boise Cascade Corporation, and deposited it in a Boise account; but Boise would then have paid the tax on it.

Q The tax would be paid by Boise?

A By Boise Cascade Corporation.

Q As part of Boise's own taxes, rather than Walter Kidde filing the tax return in its name, and Walter Kidde paying the taxes? That's what I'm trying to ascertain. Which corporation would pay the tax on these recoveries?

A I believe it would have been Boise.

Q Has there been any such recoveries to date, as far as you know?

A Yes. Yes, I can think of at least one instance where we recovered money rather than paying it out. I don't recall how the check was made payable. I believe it was made payable to Kidde, and the procedure I outlined was followed, where either it was sent to Boise, endorsed over to Boise, and sent to Boise, Idaho, or endorsed over to Boise and deposited in a Boise bank account here in New York.

Q You testified, sir, and it is alleged, that Boise' principal place of business is in Boise, Idaho, although it is a Delaware Corporation; is that a correct statement?

A Yes.

Q Boise also does business in New York as well as elsewhere; is that correct, sir?

A Yes. I'm not sure if they do business in a legal sense, but they do have an office here. I don't

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A Yes.

Q But you do not have knowledge as to how much of the business conducted by Boise is conducted in New York as opposed to the business conducted by Boise -- and again, I am speaking of this specific corporation.

A Yes.

Q -- is conducted in Idaho?

MR. WILLENKEN: Objection to the form as to how much of the business. If we could be specific. If you want to talk about perhaps the number of employees, or where the offices are, or something.

Q Do you know how many employees it has in New York, let's say, as opposed to Idaho?

A In New York they would have about a dozen or less.

Q And in Idaho, to the best of your information?

A In Idaho, they would have, well, at a minimum five to six hundred. It may be considerably more than that.

MR. BERGADANO: I have no further questions of this witness at this time.

MR. WILLENKEN: Okay.

CROSS-EXAMINATION BY MR. WILLENKEN:

Q Mr. Dornbusch, to your knowledge, where

are the offices of the President and Vice Presidents of Boise Cascade?

A In Boise, Idaho.

Q Did you after February 2, 1973 receive any compensation from Walter Kidde Constructors?

A No.

Q After February 2, 1973, who paid Emil Hansen's salary?

A Boise Cascade Corporation.

MR. WILLENKEN: I have no further questions at this time.

MR. BERGADANO: Mr. Willenken, if any of the documents that we asked for should show up at any time, I have your representation, do I not, that we will be provided with copies of those documents, and that we will not proceed to trial without the opportunity to inquire into those documents and matters relating thereto, prior to trial?

MR. WILLENKEN: That's correct.

MR. BERGADANO: Again, you know my whole purpose is I don't want to be surprised if somebody suddenly comes up from Boise, Idaho and says, "Oh, we found

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Exhibit F: Agreement between Owner and Kidde

THE AMERICAN INSTITUTE OF ARCHITECTS

BEST COPY AVAILABLE

AIA Document A101

Standard Form of Agreement Between Owner and Contractor

where the basis of payment is a

STIPULATED SUM

Use only with the latest Edition of AIA Document A201, General Conditions of the Contract for Construction.

AGREEMENT

made this 29th day of October in the year of Nineteen Hundred and Sixty-eight

BETWEEN

The Mount Sinai Hospital
500 Blue Hills Avenue
Hartford, Connecticut

the Owner, and

Walter Kidde Constructors, Inc.
19 Rector Street
New York, New York

the Contractor.

The Owner and the Contractor agree as set forth below.

Perkins
Ex 45-1 (UTC)
Jan 19-1976 (UT)

ARTICLE 1

THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, all Addenda issued prior to execution of this Agreement and all Modifications issued subsequent thereto. These form the Contract, and all are as fully a part of the Contract as if attached to this Agreement or repeated herein. An enumeration of the Contract Documents appears in Article 8.

ARTICLE 2

THE WORK

The Contractor shall perform all the Work required by the Contract Documents for

(Here insert the caption descriptive of the Work as used on other Contract Documents.)

The Mount Sinai Hospital
Hartford, Connecticut
Stage I Additions and Alterations

ARTICLE 3

ARCHITECT

The Architect for this Project is E. Todd Wheeler and The Perkins & Will Partnership

ARTICLE 4

TIME OF COMMENCEMENT AND COMPLETION

The Work to be performed under this Contract shall be commenced not later than October 1, 1968

and completed May 1, 1972.

(Here insert any special provisions for liquidated damages relating to failure to complete on time.)

1. Completion of the work will be required in accordance with the following schedule:

   Completion of Phase B 1100 calendar days (October 1, 1971)
   Completion of Phase C 1300 calendar days (May 1, 1972)

2. If the work of Phase B, including Phase A, is not complete and ready to be occupied by the Owner for the intended purpose within the number of days set forth hereinbefore, the Contractor will be required to pay to the Owner the sum of $1,000. per day as liquidated damages for each calendar day thereafter during which the Owner is deprived of such occupancy.

ARTICLE 5

CONTRACT SUM

The Owner shall pay the Contractor for the performance of the Work, subject to additions and deductions by Change Order as provided in the Conditions of the Contract, in current funds, the Contract Sum of

FOURTEEN MILLION ONE HUNDRED TWENTY-NINE THOUSAND SIX HUNDRED AND 00/100 ($14,129,600.00)

(State here the lump sum amount, unit prices, or both, as desired.)

which amount is the sum of the Contractor's Proposals, dated January 30, 1968, as follows:

1.	Base Proposal	$13,900,000
2.	Alternate #A-6	126,000
3.	Alternate #A-8	24,600
4.	Alternate #A-9	79,000
		$14,129,600

ARTICLE 6

PROGRESS PAYMENTS

Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided in the Conditions of the Contract as follows:

On or about the fifteenth (15th) day of each month ninety (90) per cent of the proportion of the Contract Sum properly allocable to labor, materials and equipment incorporated in the Work and ninety (90) per cent of the portion of the Contract Sum properly allocable to materials and equipment suitably stored at the site or at some other location agreed upon in writing by the parties, up to the tenth (10th) day of that month, less the aggregate of previous payments in each case; and upon Substantial Completion of the entire Work, a sum sufficient to increase the total payments to ninety-five (95) per cent of the Contract Sum, less such retainages as the Architect shall determine for all incomplete Work and unsettled claims.

(Here insert any provisions made for limiting or reducing the amount retained after the Work reaches a certain stage of completion.)

Completion of each phase, as defined in the Supplementary General Conditions (Paragraph 64(b), shall be considered an occasion for release of retained percentage of the work of such phase, on the Architect's certification.

See Par. 26 Gen. Conditions

ARTICLE 7

FINAL PAYMENT

Final payment, constituting the entire unpaid balance of the Contract Sum, shall be paid by the Owner to the Contractor Thirty (30) days after Substantial Completion of the Work unless otherwise stipulated in the Certificate of Substantial Completion, provided the Work has then been completed, the Contract fully performed, and a final Certificate for Payment has been issued by the Architect.

ARTICLE 8

MISCELLANEOUS PROVISIONS

8.1 Terms used in this Agreement which are defined in the Conditions of the Contract shall have the meanings designated in those Conditions.

8.2 The Contract Documents, which constitute the entire agreement between the Owner and the Contractor, are listed in Article 1 and, except for Modifications issued after execution of this Agreement, are enumerated as follows:

(List below the Agreement, Conditions of the Contract (General, Supplementary, other Conditions), Drawings, Specifications, Addenda and accepted Alternates, showing page or sheet numbers in all cases and dates where applicable.)

This Agreement

Proposal of Walter Kidde Constructors, Inc., dated January 30, 1968.

Drawings titled "The Mount Sinai Hospital, Hartford, Connecticut Stage I Additions and Alterations, dated November 22, 1967, as follows:

L1-L4, A1-A54, FSE1-FSE3, A101-A105, L101-L104, S1-S15, S101, S102, M1-M31, P1-P19, P103, SP1-SP13, PT1-PT14, E1-E24. PC: A1-A4, L1, L2, S1, S2, ME1-ME5.

Specifications titled, "The Mount Sinai Hospital, Hartford, Connecticut, Stage I Additions and Alterations", dated November 22, 1967.

Addendum No. 1 dated December 29, 1967.
Addendum No. 2 dated January 9, 1968.
Addendum No. 3 dated January 12, 1968.
Addendum No. 4 dated January 19, 1968.

Exhibit "A" attached.
Exhibit "B" attached.

In the event of conflict between this Agreement and any other Contract Documents, this Agreement shall prevail.

This Agreement executed the day and year first written above.

OWNER

The Mount Sinai Hospital
Duly authorized hereunto

CONTRACTOR

Charles E. DeAngelis, Vice President
Walter Kidde Constructors, Inc.
Duly authorized hereunto

EXHIBIT "A"

Arbitration

Article S.G.C.01, Paragraph 6a, shall be voided.
Article S.G.C.01, Paragraph 7, shall read as follows:
"Matters subject to arbitration shall be decided in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, unless the parties mutually agree otherwise. This agreement so to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof."

EXHIBIT "B"

Suspension of Work

Add as a subparagraph "c" to Article C.03.10: "The Owner may at any time suspend the work, or any part thereof, by giving 30 days' notice to the Contractor in writing. The work shall be resumed by the Contractor within 10 days after written notice is furnished by the Owner to the Contractor to resume such work. If the Contractor has incurred any extra costs as a consequence of such suspension, as determined by the Architect, the Owner shall reimburse the Contractor for such additional costs.
If the work, or any part thereof, shall be suspended as aforesaid for a period in excess of 90 days, then the Contractor may abandon that portion of the work so suspended and he will be entitled to payment for all work done on the portion so abandoned in accordance with the basic contract."

Exhibit G:
General Conditions to Agreement between Owner and Kidde

PHS-143
Rev. 5-64

Form Approved
Budget Bureau No. 68-R312

GENERAL CONDITIONS

TITLE	Paragraph No.
Access to the Work	4
Accident Prevention	20
Arbitration	7
Architect's Decisions	6
Assignments	46
Award of Contract	16
Bidders Present	15
Changes in Work	43
Climatic Conditions	41
Conditions at Site or Building	9
Contract Documents	2
Contract Security	18
Contractor's Right To Stop Work or Terminate Contract	32
Contractor's Title to Materials	29
Definitions	1
Delays, Damages	31
Detail Drawings and Instructions	3
Drawings	14
Engineering and Lay-out	13
Explanation to Bidders	11
Extras	42
Final Inspection	51
Guarantee of Work	52
Heating	40
Inspection	50
Insurance, Contractor's and Subcontractor's	19
Laboratory Tests	39
Laws, Permits, and Regulations	10
Materials and Workmanship	38
Materials, Services, and Facilities	48
Mutual Responsibility of Contractors	25
Notice	8
Owner's Right To Stop Work or Terminate Contract	31
Patents	45
Payments by Contractor	30
Payments to Contractor	28
Preparation and Submission of Bids	12
Protection of Work and Property	22
Receipt and Opening of Bids	13
Rejection of Bids	17
Responsibility of Contractor To Act in Emergency	23
Samples	33
Separate Contracts	24
Schedule of Values	27
Shop Drawings	35
Specifications and Drawings	47
Standards	37
Subcontracts	21
Superintendence by Contractor	49
Supervision	5
Taxes	44
Use of Premises and Removal of Debris	26
Withdrawal of Bids	14

Fire Pump
Ex A-5-3
(NT) Jun 15-76 (Ex 5)

1. Definitions.—The terms "Owner," "Architect," "State Agency," and "Surgeon General" as used herein are defined as set forth below, unless reference is made to another location for definition. They are treated throughout the specifications as if each were of the singular number and masculine gender.

(a) The terms "Owner" and "Architect" are those defined as such in the General Requirements Section of the Specification.

(b) The term "State Agency" means the agency designated by the State as the sole agency for administering the State plans or, as the sole agency for supervising the administration of the State plans approved by the Surgeon General for the following construction grant programs: Hospital and Medical Facilities Survey and Construction (Hill-Burton), Hospital and Medical Facilities under Accelerated Public Works, Facilities for the Mentally Retarded and Community Mental Health Centers, and shall include all authorized representatives of the State agency.

(c) The term "Surgeon General" means the Surgeon General of the U.S. Public Health Service, and shall include his authorized representatives.

2. Contract Documents.—(a) The Contract Documents consist of the Agreement, the Drawings and Specifications, including all addenda and alterations made in the documents prior to their execution.

(b) The Contract Documents shall be signed by the Owner and Contractor in as many original counterparts as may be mutually agreed.

(c) Anything called for by one of the Contract Documents and not called for by the others shall be of like effect as if required or called for by all. In case of discrepancies between the Contract Documents the specifications shall take precedence over the drawings, and the Agreement shall take precedence over the drawings and specifications. Any discrepancies between the Contract Documents shall be called to the attention of the Architect before proceeding with work affected thereby.

3. Detail Drawings and Instructions.—(a) The Contractor will be furnished additional instructions and detail drawings as may be necessary to carry out the work included in the contract. The additional drawings and instructions, thus supplied to the Contractor, shall be consistent with the Contract Documents, true developments thereof, and shall be so prepared that they can be reasonably interpreted as a part thereof. The Contractor shall carry out the work in accordance with the additional detail drawings and instructions.

(b) The Contractor and the Architect will prepare, jointly, (1) a schedule fixing the dates at which special detail drawings will be required; and (2) a schedule fixing the respective dates for the submission of shop or setting drawings, the beginning of manufacture, testing and installation of materials, supplies, and equipment, and the completion of the various parts of the work, each such schedule to be subject to change from time to time in accordance with the progress of the work.

4. Access to the work.—The Architect, the Surgeon General and, in the case of such programs as they administer under 1(b) page 2, the State agency and their authorized representatives shall have access at all times to the work for inspection wherever it is in preparation or progress, and the contractor shall provide proper facilities for such access and inspection.

5. Supervision.—All work shall be done under the supervision of the Architect designated by the Owner. The Architect shall determine the amount, quality, acceptability, and fitness of all parts of the work, shall interpret the Specifications, Contract Documents, and any Extra Work Orders, and shall decide all other questions in connection with the work. The Architect shall have no authority to approve or order changes in the work which alter the terms or conditions of the contract. Upon request, the Architect shall confirm in writing any oral order, direction, requirement, or determination.

6. Architect's Decisions.—(a) It shall be the responsibility of the Architect to make written decisions in regard to all claims of the Owner or Contractor and to interpret the Contract Documents on all questions arising in connection with the execution of the work.

(b) Except as otherwise specified, all the Architect's decisions or interpretations of contract requirements are subject to arbitration.

(c) If the Architect fails to make a written decision or written interpretation of the contract requirements on any question within ten days after written request for same by either party to the contract, either party may then demand arbitration, in which event later decision by the Architect shall not stop the arbitration proceedings except with the mutual consent of both parties to the contract.

7. Arbitration.—(a) It is mutually agreed that all disputes arising in connection with this contract shall be submitted to arbitration in accordance with the provisions of the current Standard Form of Arbitration Procedure of the American Institute of Architects and that all findings of fact by the arbitrators under this agreement shall be conclusive and binding on both parties. It is further mutually agreed that the decision of the arbitrators shall be a prior condition to any right of legal action which either party to the contract may have against the other.

(b) The work under this contract shall not be stopped or delayed in any way during the arbitration proceedings except by written mutual consent of both parties to the contract, and such mutual consent shall stipulate whether extension of the time for completion of the contract will be authorized by such stoppage or delay.

(c) Demand for arbitration in connection with any dispute shall be filed in writing with the Architect and with the other party to the contract. Any demand for arbitration shall be made within thirty days after the dispute has arisen if practicable, but, in any event, no demand for arbitration shall be made after the date of final payment except in the case of a dispute arising in connection with any guarantee provisions of the Contract Documents.

(d) The arbitrators hereunder shall have authority to award to the party whose contentions are approved as being in conformity with contract requirements such sums as they, or a majority of them, consider is proper to compensate the injured party for any loss in connection with the proceedings; and, if they find that the arbitration proceedings were demanded without reasonable cause, they may in addition award the injured party damages for delay, unless precluded by agreement between the contracting parties before arbitration. The arbitrators shall set their own compensation and determine the total amount of such compensation and other costs and expenses of the proceedings incurred by them, unless otherwise agreed prior to the proceedings, and shall assess the total of the costs of the proceedings upon either or both parties to the contract in such proportions as they, or a majority of them, may approve.

8. Notice.—The term "Notice" as used herein shall mean and include all written notices, demands, instructions, claims, approvals, and disapprovals required to obtain compliance with contract requirements. Any written notice by either party to the contract shall be sufficiently given if delivered to or at the last known business address of the person, firm, or corporation constituting the other party to the contract, or to his, their, or its duly authorized agent, representative, or officer; or when enclosed in a postage prepaid envelope addressed to such last known business address and deposited in a United States mail box.

9. Conditions at Site or Building.—(a) Bidders should visit the site and shall be responsible for having ascertained pertinent local conditions such as location, accessibility, and general character of the site or building, the character and extent of existing work within or adjacent to the site, and any other work being performed thereon at the time of the submission of his bid.

(b) If, in the performance of the contract, subsurface or latent conditions at the site are found to be materially different from those indicated by the drawings and specifications, or unknown conditions of an unusual nature are disclosed differing materially from the conditions usually inherent in work of the character shown and specified, the attention of the Architect shall be called immediately to such conditions before they are disturbed. Upon such notice, or upon his own observation of such conditions, the Architect shall promptly make such changes in the drawings and specification as he finds necessary to conform to the different conditions, and any increase or decrease in the cost of the work resulting from such changes shall be adjusted as provided under Changes in Work.

10. Laws, Permits, and Regulations.—(a) The Contractor shall obtain and pay for all licenses and permits and shall pay all fees and charges for connection to outside service and use of property other than the site of the work for storage of materials or other purpose.

(b) The Contractor shall comply with all laws, ordinances, regulations, and building code requirements applicable to work hereunder unless in conflict with contract requirements. If the Contractor ascertains at any time that any requirement of this contract is at variance with applicable laws, ordinances, regulations, or building code requirements, he shall promptly notify the Architect, and any necessary adjustment of the contract shall be made as specified under Changes in Work.

11. Explanation to Bidders.—No oral explanation in regard to the meaning of the drawings and specifications will be made and no oral instructions will be given before the award of the contract. Discrepancies, omissions, or doubts as to the meaning of drawings and specifications should be communicated in writing to the Architect for interpretation. Bidders should act promptly and allow sufficient time for a reply to reach them before the submission of their bids. Any interpretation made will be in the form of an addendum to the specifications which will be forwarded to all bidders and its receipt by the bidder should be acknowledged on the Bid Form.

12. Preparation and Submission of Bids.—(a) The bidder is required to bid on all alternates or on all items called for in the Bid Form, except that if alternates are called for on a type or method of construction as to which the bidder does not desire to bid he may insert the words "No bid" in the space provided for prices on such alternate type or method of construction. In such case, if it is determined to use such alternate type or method of construction, the fact that the cost of the type or method bid on by the bidder may be lower than that chosen shall not constitute the basis of a claim by the bidder that the contract shall be awarded to him. In the case the bidder desires to bid on an alternate he shall set forth in the space provided therefor the amount to be added to or deducted from the Base Bid. If an alternate price called for does not involve a change in price, the bidder shall so indicate by writing the words "No change" in the space provided.

(b) Bids shall be submitted on the forms furnished, or copies thereof, and shall be signed in ink. Erasures or other changes in a bid must be explained or noted over the signature of the bidder. Bids containing any conditions, omissions, unexplained erasures or alterations, or items not called for in the proposal, or irregularities of any kind may be rejected by the Owner as being incomplete.

(c) Each bid must give the full business address of the bidder and be signed by him with his usual signature. Bids by partnerships must furnish the full name of all partners and must be signed in the partnership name by one of the members of the partnership or by an authorized representative, followed by the signature and designation of the person signing. Bids by corporations must be signed with the legal name of the corporation, followed by the name of the State of incorporation and by the signature and designation of the president, secretary, or other person authorized to bind it in the matter. The name of each person signing shall also be typed or printed below the signature. A bid by a person who affixes to his signature the word "President," "Secretary," "Agent," or other designation, without disclosing his principal, may be held to the bid of the individual signing. When requested by the Owner, satisfactory evidence of the authority of the officer signing in behalf of the corporation shall be furnished.

(d) Bids shall be enclosed in a sealed envelope which shall be marked and addressed as required by Directions for Mailing on the Bid Form.

13. Receipt and Opening of Bids.—(a) Bids will be opened publicly at the time and place stated in the invitation for bids. The officer whose duty it is to open them will decide when the specified time has arrived and no bid received thereafter will be considered. No responsibility will attach to any officer for the premature opening of a bid not properly addressed and identified.

(b) Telegraphic bids will not be considered, but modifications by telegraph of bids already submitted will be considered if received prior to the hour set for opening.

14. Withdrawal of Bids.—Bids may be withdrawn on written or telegraphic request received from bidders prior to the time fixed for opening. Negligence on the part of the bidder in preparing the bid confers no right for the withdrawal of the bid after it has been opened.

15. Bidders Present.—At the time fixed for the opening of bids, their contents will be made public for the information of bidders and others properly interested who may be present, either in person or by representative.

16. Award of Contract.—(a) The contract will be awarded as soon as possible to the responsible bidder submitting the lowest acceptable bid.

(b) The Owner reserves the right to waive any informality in bids received when such waiver is in the interest of the Owner.

(c) The Owner further reserves the right to accept any item in the bid without accepting the bid in its entirety, unless the bidder qualifies such bid by special limitation, and to make the award to the bidder whose combination of the base bid and accepted alternates is low.

(d) Each bidder shall be prepared, if so requested by the Owner, to present evidence of his experience, qualifications, and financial ability to carry out the terms of the contract.

17. Rejection of Bids.—The Owner reserves the right to reject all bids, when such rejection is in the interest of the Owner, and to reject any or all bids failing to comply with the conditions specified in paragraph 16.

18. Contract Security.—The successful bidder must deliver to the Owner an executed Performance Bond in an amount at least equal to 100 percent (100%) of the accepted bid as security for the faithful performance of the contract, and also must deliver to the Owner a separate executed Payment Bond in an amount at least equal to 100 percent (100%) of the accepted bid as security for the payment of all persons performing labor and furnishing materials in connection with this contract. The sureties of all bonds shall be such surety company or companies as are approved by the Owner and as are authorized to transact business in the State where the proposed project is located. The bonds must be approved by the Owner prior to execution of the formal contract. On contracts for materials and equipment only, involving no labor on the site, Performance and Payment Bonds will not be required unless expressly so stated.

19. Contractor's and Subcontractor's Insurance.—(a) The contractor shall not commence work under this contract until he has obtained all the insurance required hereunder and such insurance has been approved by the Owner, nor shall the Contractor allow any subcontractor to commence work on his subcontract until all similar insurance required of the subcontractor has been so obtained and approved. Approval of the insurance by the Owner shall not relieve or decrease the liability of the Contractor hereunder.

(b) *Compensation and Employer's Liability Insurance.*—The Contractor shall take out and maintain during

the life of this contract the statutory Workmen's Compensation and Employer's Liability Insurance for all of his employees to be engaged in work on the project under this contract and, in case any such work is sublet, the Contractor shall require the subcontractor similarly to provide Workmen's Compensation and Employer's Liability Insurance for all of the latter's employees to be engaged in such work.

(c) *Bodily Injury Liability and Property Damage Liability Insurance.*—The contractor shall take out and maintain during the life of this contract such Bodily Injury Liability and Property Damage Liability Insurance and Automobile Bodily Injury Liability and Property Damage Liability Insurance as shall protect him and any subcontractor performing work covered by this contract from claims for damages for personal injury, including accidental death, as well as from claims for property damage, which may arise from operations under this contract, whether such operations be by himself or by any subcontractor or by anyone directly or indirectly employed by either of them, and the amounts of such insurance shall not be less than—

(1) Bodily Injury Liability Insurance, in an amount not less than One Hundred Thousand Dollars ($100,000.00) for injuries, including wrongful death to any one person, and subject to the same limit for each person in an amount not less than Three Hundred Thousand Dollars ($300,000.00) on account of one accident.

(2) Property Damage Insurance in an amount not less than Fifty Thousand Dollars ($50,000.00) for damages on account of any one accident, and in an amount not less than One Hundred Thousand Dollars ($100,000.00) for damages on account of all accidents.

(d) *Owner's Protective Liability Insurance.*—The contractor shall take out and furnish to the Owner and maintain during the life of this contract complete Owner's Protective Liability Insurance in amounts as specified in paragraph 10(c), above, for Bodily Injury Liability Insurance and for Property Damage Liability Insurance.

(e) *Fire Insurance.*—The Contractor shall insure the building or other work included in this contract against loss or damage by fire, and against loss or damage covered by the standard extended coverage insurance endorsement in an insurance company or companies acceptable to the Owner, the amount of the insurance at all times to be at least equal to the amount paid on account of work and materials and plus the value of work or materials furnished or delivered but not yet paid for by the Owner. The policies shall be in the names of the Owner and the Contractor, as their interests may appear, and certificates of the insurance company as to the amount and type of coverage, terms of policies, etc., shall be delivered to the Owner before monthly partial payments are made. The policy shall provide for the inclusion of the names of all other contractors, subcontractors, and others employed on the premises as ensureds, and shall stipulate that the insurance companies shall have no right of subrogation against any contractors, subcontractors, or other parties employed on the premises for any work, building alteration, construction, or erection to the described property.

20. Accident Prevention.—Precaution shall be exercised at all times for the protection of persons (including employees) and property. The safety provisions of applicable laws, building and construction codes shall be observed. Machinery, equipment, and all hazards shall be guarded or eliminated in accordance with the safety provisions of the latest edition of the Manual of Accident Prevention in Construction, published by the Associated General Contractors of America, to the extent that such provisions are not in contravention of applicable law.

21. Subcontracts.—(a) Nothing contained in the specifications or drawings shall be construed as creating any contractual relationship between any subcontractor and the Owner. The divisions or sections of the specifications are not intended to control the Contractor in dividing the work among subcontractors or to limit the work performed by any trade.

(b) The Contractor shall be as fully responsible to the Owner for the acts and omissions of subcontractors, and of persons employed by them, as he is for the acts and omissions of persons directly employed by him.

(c) The Contractor shall be responsible for the coordination of the trades, subcontractors, and material men engaged upon his work.

(d) The Contractor shall, without additional expense to the Owner, utilize the services of specialty subcontractors on those parts of the work which are specified to be performed by specialty subcontractors.

(e) The Owner or Architect will not undertake to settle any differences between the Contractor and his subcontractors or between subcontractors.

(f) The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractors to the Contractor by the terms of the General Conditions and other Contract Documents insofar as applicable to the work of subcontractors and to give the Contractor the same power as regards terminating any subcontract that the Owner may exercise over the Contractor under any provisions of the Contract Documents.

22. Protection of Work and Property.—The Contractor shall at all times safely guard the Owner's property from injury or loss in connection with this contract. He shall at all times safely guard and protect his own work, and that of adjacent property (as provided by law and the Contract Documents) from damage. All passageways, guard fences, lights, and other facilities required for protection by State or municipal laws and regulations and local conditions, must be provided and maintained.

23. Responsibility of Contractor To Act in Emergency.—In case of an emergency which threatens loss or injury of property, and/or safety of life, the Contractor shall act, without previous instructions from the Owner or Architect, as the situation may warrant. He shall notify the Architect thereof immediately thereafter. Any compensation claimed by the Contractor, together with substantiating documents in regard to expense, shall be submitted to the Owner through the Architect and the amount of compensation shall be determined by agreement or arbitration.

24. Separate Contracts.—The Owner plans to award other contracts in connection with the project, the work under which will proceed simultaneously with the execution of this contract. The Contractor shall coordinate operations with those of other contractors. Cooperation will be required in the arrangement for the storage of materials and in the detailed execution of the work. The Contractor, including his subcontractors, shall keep himself informed of the progress and the detail work of other contractors and shall notify the Architect immediately of lack of progress or defective workmanship on the part of other contractors, where such delay or such defective workmanship will interfere with his own operations. Failure of a Contractor to keep informed of the work progressing on the site and failure to give notice of lack of progress or defective workmanship by others shall be construed as acceptance by him of the status of the work as being satisfactory for proper coordination with his own work.

25. Mutual Responsibility of Contractors.—If the Contractor or any of his subcontractors or employees cause loss or damage to any separate contractor on the work, the Contractor agrees to settle with such separate contractor by agreement or arbitration, if he will so settle. If such separate contractor sues the Owner, on account of any loss so sustained, the Owner shall notify the Contractor, who shall indemnify and save harmless the Owner against any expenses or judgment arising therefrom.

26. Use of Premises and Removal of Debris.—The Contractor expressly undertakes at his own expense—

(a) To take every precaution against injuries to persons or damages to property;

(b) To comply with the regulations governing the operation of premises which are occupied and to perform his contract in such a manner as not to interrupt or interfere with the operation of the hospital or other health facility;

(c) To perform any work necessary to be performed after regular working hours or on Sundays or legal holidays without additional expense to the Owner;

(d) To store his apparatus, materials, supplies, and equipment in such orderly fashion at the site of the work as will not unduly interfere with the progress of his work or the work of any other contractors;

(e) To place upon the work or any part thereof only such loads as are consistent with the safety of that portion of the work;

(f) Frequently to clean up all refuse, rubbish, scrap materials, and debris caused by his operations, to the end that at all times the site of the work shall present a neat, orderly, and workmanlike appearance;

(g) To effect all cutting, fitting, or patching of his work required to make the same conform to the plans and specifications, and except with the consent of the Architect not to cut or otherwise alter the work of any other contractor.

(h) Before final payment to remove all surplus material, false work, temporary structures, including foundations thereof, plant of any description, and debris of every nature resulting from his operations and to put the site in a neat, orderly condition; to thoroughly clean and leave reasonably dust-free all finished surfaces on the interior of all buildings included in the contract; and to wash and polish all glass installed under the contract, including the removal of all paint spatters and other defacements.

27. Schedule of Values.—Before the first partial payment under the contract becomes due, the Contractor and the Architect shall prepare jointly a schedule of the estimated values of the main branches of the work, totaling the amount of the contract. The values in the schedule will be used only for determining partial payments.

28. Payments to Contractor.—(a) Unless otherwise provided in the specifications, the Owner will make partial payments to the contractor not later than the 15th day of each calendar month on the basis of a duly certified and approved estimate of the work performed during the preceding calendar month, as prepared by the Contractor and approved by the Architect. In preparing estimates, the materials delivered on the site and preparatory work done shall be taken into consideration.

(b) In making such partial (monthly) payments, there shall be retained ten (10) percent on the estimated amounts until final completion and acceptance of all work covered by the contract; provided, however, that the architect may at any time after fifty (50) percent of the work has been completed, if he finds that satisfactory progress is being made and with written consent of surety, recommend that any of the remaining partial payments be paid in full.

(c) Payments for work under subcontracts of the general contractor shall be subject to the above conditions applying to the general contract.

(d) All material and work covered by partial payments made shall thereupon become the sole property of the Owner, but this provision shall not be construed as relieving the Contractor from the sole responsibility for all materials and work upon which payments have been made or the restoration of any damaged work or as a waiver of the right of the Owner to require the fulfillment of all of the terms of the contract.

(e) *Release of Claims.*—Neither the Final Payment nor any part of the retained percentage shall become due until the Contractor shall deliver to the Owner through the Architect a complete release of all claims against the Owner arising under and by virtue of this contract, including claims of all subcontractors and suppliers of either materials or labor, other than such claims, if any, as may be specifically excepted by the Contractor.

(f) *Certificate of Completion.*—Upon completion and acceptance of all work whatsoever required, and the release of all claims against the Owner as specified, the Architect shall file a written certificate with the Owner and with the Contractor as to the entire amount of work performed and compensation earned by the Contractor, including extra work and compensation therefor.

(g) *Final Payment.*—Within thirty (30) days after the filing of such certificate of completion, the Owner shall pay to the Contractor the amount therein stated, less all prior payments and advances whatsoever to or for the account of the Contractor. All prior estimates and payments including those relating to extra work shall be subject to correction by this payment, which is throughout this Contract called Final Payment.

(h) *Acceptance of Final Payment Constitutes Release.*—The acceptance by the Contractor of the Final Payment shall be and shall operate as a release to the Owner of all claims and of all liability to the Contractor for all things done or furnished in connection with this work and for every act and neglect of the Owner and others relating to or arising out of this work, excepting the Contractor's claims for interest upon the Final Payment, if this payment be improperly delayed. No payments, however, final or otherwise, shall operate to release the Contractor or his sureties from any obligations under this contract or the Performance and Payment Bonds.

29. Contractor's Title to Materials.—No materials or supplies for the work shall be purchased by the Contractor or by any subcontractor subject to any chattel mortgage or under a conditional sale or other agreement by which an interest is retained by the seller. The Contractor warrants that he has good title to all materials and supplies for which he accepts partial payment.

30. Payments by Contractor.—The Contractor shall pay (a) for all transportation and utility services not later than the 20th day of the calendar month following that in which such services are rendered; (b) for all materials, tools, and other expendable equipment to the extent of 90 percent of the cost thereof, not later than the 20th day of the calendar month following that in which such materials, tools, and equipment are delivered at the site of the project, and the balance of the cost thereof not later than the 20th day following the completion of that part of the work in or on which such materials, tools, and equipment are incorporated or used; and (c) to each of his subcontractors, not later than the 5th day following each payment to the Contractor, the respective amounts allowed the Contractor on account of the work performed by his subcontractors, to the extent of each subcontractor's interest therein.

31. Owner's Right To Stop Work or Terminate Contract; Delays, Damages.—(a) If (1) the Contractor shall be adjudged bankrupt or make an assignment for the benefit of creditors, or (2) a receiver or liquidator shall be appointed for the Contractor or for any of his property and shall not be dismissed within 20 days after such appointment, or the proceedings in connection therewith shall not be stayed on appeal within the said 20 days, or (3) the Contractor shall refuse or fail, after Notice of Warning from the Architect, to supply enough properly skilled workmen or proper materials, or (4) the Contractor shall refuse or fail to prosecute the work or any part thereof with such diligence as will insure its completion within the period herein specified (or any duly authorized extension thereof) or shall fail to complete the work within said period, or (5) the Contractor shall fail to make payments as specified to persons supplying labor or materials for the work, or (6) the Contractor shall fail or refuse to regard laws, ordinances, or the instructions of the Architect or otherwise be guilty of a substantial violation of any provision of this contract, then, and in any such event, the Owner, upon the certificate of the Architect that sufficient cause exists to justify such action, and without prejudice to any other rights or remedy he may have, may by 10 days' notice to the Contractor, terminate the employment of the Contractor and his right to proceed, either as to the entire work or (at the option of the Owner) as to any portion thereof as to which delay shall have occurred, and may take

possession of the work and complete the work by contract or otherwise, as the Owner may deem expedient. In such case the Contractor shall not be entitled to receive any further payment on that work until the work is finished. If the unpaid balance of the compensation to be paid the Contractor hereunder shall exceed the expense of so completing the work (including compensation for additional managerial, administrative, and inspection services and any liquidated damages for delay), such excess shall be paid to the Contractor. If such expense shall exceed such unpaid balance, the Contractor and his sureties shall be liable to the Owner for such excess. If the right of the Contractor to proceed with the work is so terminated, the Owner may take possession of and utilize in completing the work such materials, supplies, plant, and equipment as may be on the site of the work and necessary therefor. The expense incurred by the Owner as herein provided, and the damage incurred through the Contractor's default, shall be certified by the Architect.

(b) If the Owner does not terminate the right of the Contractor to proceed, the Contractor shall continue the work, in which event the Contractor shall pay to the Owner as fixed, agreed, and liquidated damages for each calendar day of the delay until work is completed or accepted the amount as set forth in the General Requirements section of the specification and the Contractor and his sureties shall be liable for the amount thereof.

(c) *Provided* that the right of the Contractor to proceed shall not be terminated, or the Contractor charged with liquidated damages because of any delays in the completion of the work due to unforeseeable cause beyond the control and without the fault or negligence of the Contractor including, but not restricted to, acts of God or of the public enemy, acts of the Government, acts of the Owner, acts of another contractor in the performance of a contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, or delays of subcontractors due to such causes, if the Contractor shall, within ten days from the beginning of any such delay (unless the Owner shall grant a further period of time prior to the date of final settlement of the contract) notify the Owner in writing through the Architect of the causes of delay, who shall ascertain the facts and the extent of the delay and extend the time for completing the work when in his judgment the findings of fact justify such an extension, and his findings of fact thereon shall be final and conclusive on the parties hereto, subject only to arbitration as specified herein.

32. Contractor's Right To Stop Work or Terminate Contract.—If through no fault of the Contractor or of anyone employed by him (1) the work is stopped by order of any court or governmental authority, or (2) the Architect fails to issue any certificate for payment within ten days after it is due, or (3) the Owner fails to pay to the Contractor within ten days after its presentation any sum certified by the Architect or awarded by arbitrators, then the Contractor may, upon ten days' written notice to the Owner and the Architect, stop work or terminate the contract, and the Owner shall be liable to the Contractor for any loss sustained and reasonable profit.

33. Engineering and Lay-out.—(a) The Contractor shall provide competent engineering services to execute the work in accordance with the contract requirements. He shall verify the figures shown on the survey and approach drawings before undertaking any construction work and shall be responsible for the accuracy of the finished work.

(b) The Owner has established, or will establish, such general reference points as will, in his judgment, enable the Contractor to proceed with the work. If the Contractor finds that any previously established reference points have been destroyed or displaced, he shall promptly notify the Owner.

(c) The Contractor shall protect and preserve the established bench marks and monuments and shall make no changes in locations without the written approval of the owner. Any of them which may be lost or destroyed or which require shifting because of necessary changes in grades or locations shall, subject to prior approval by the Owner, be replaced and accurately located by the Contractor.

34. Drawings.—(a) The general character and scope of the work are illustrated by the drawings listed in the specifications. Any additional detail drawings and other information deemed necessary by the Architect will be furnished to the Contractor when and as required by the work.

(b) In case of differences between small- and large-scale drawings, the large-scale drawing shall govern.

(c) Where on any of the drawings a portion of the work is drawn out and the remainder is indicated in outline, the parts drawn out shall apply also to all other like portions of the work.

(d) Where the word "similar" occurs on the drawings, it shall be interpreted in its general sense and not as meaning identical, and all details shall be worked out in relation to their location and their connection with other parts of the work.

35. Shop Drawings.—(a) The Contractor shall submit, for the approval of the Architect, shop and setting drawings and schedules required by the specifications or that may be requested by the Architect and no work shall be fabricated by the Contractor, save at his own risk, until such approval has been given.

(b) Drawing and schedules shall be submitted in quadruplicate (unless otherwise specified), accompanied by letter of transmittal which shall give a list of the numbers and dates of the drawings submitted. Drawings shall be complete in every respect and bound in sets.

(c) The Contractor shall submit all drawings and schedules sufficiently in advance of construction requirements to allow ample time for checking, correcting, resubmitting and rechecking.

(d) The drawings submitted shall be marked with the name of the project, numbered consecutively and bear the stamp of approval of the Contractor as evidence that the drawings have been checked by the Contractor. Any drawings submitted without this stamp of approval will not be considered and will be returned to the Contractor for resubmission. If the shop drawings show variations from the requirements of the contract because of standard shop practice or other reasons, the Contractor shall make specific mention of such variation in his letter of transmittal in order that, if acceptable, suitable action may be taken for proper adjustment; otherwise the Contractor will not be relieved of the responsibility for executing the work in accordance with the contract even though such shop drawings have been approved.

(e) If a drawing as submitted indicates a departure from the contract requirements which the Architect finds to be in the interest of the Owner and to be so minor as not to involve a change in the contract price or time for performance, he may approve the drawing.

(f) The approval of shop and setting drawings will be general and, except as otherwise provided in paragraph 35(e), above, shall not be construed (1) as permitting any departure from the contract requirements; (2) as relieving the Contractor of the responsibility for any error in details, dimensions or otherwise that may exist; (3) as approving departures from additional details or instructions previously furnished by the Architect.

36. Materials and Workmanship.—Unless otherwise specified, all materials and equipment incorporated in the work under the contract shall be new. All workmanship shall be first-class and by persons qualified in the respective trades.

37. Standards.—(a) Any material specified by reference to the number, symbol or title of a specific standard, such as a Commercial Standard, a Federal Specification, a trade association standard, or other similar standard, shall comply with the requirements in the latest revision thereof and any amendment or supplement thereto in effect on the date of Invitation for Bids, except as limited to type, class or grade, or modified in such reference.

(b) The standards referred to, except as modified in the specifications, shall have full force and effect as though

printed in the specifications. These standards are not furnished to bidders for the reason that the manufacturers and trades involved are assumed to be familiar with their requirements. The Architect will furnish, upon request, information as to how copies of the standards referred to may be obtained.

(c) Notwithstanding any reference in the specifications to any article, device, product, material, fixture, form, or type of construction by name, make, or catalog number, such references shall be interpreted as establishing a standard of quality and shall not be construed as limiting competition; and the Contractor, in such cases, may at his option use any article, device, product, material, fixture, form, or type of construction which in the judgment of the Architect expressed in writing is equal to that specified.

38. Samples.—(a) The Contractor shall furnish for the approval of the Architect any samples required by the specifications or that may be requested by the Architect, of any and all materials or equipment he proposes to use and shall prepay all shipping charges on the samples.

(b) No samples are to be submitted with the bids.

(c) No materials or equipment of which samples are required to be submitted for approval shall be used on the work until such approval has been given by the Architect, save only at the Contractor's risk and expense.

(d) Each sample shall have a label indicating the material represented, its place of origin and the names of the producer, the Contractor and the building or work for which the material is intended. Samples of finished materials shall be so marked as to indicate where the materials represented are required by the drawing or specifications.

(e) A letter in duplicate submitting each shipment of samples shall be mailed under separate cover by the Contractor and contain a list of the samples, the name of the building or work for which the materials are intended, and the brands of the materials and names of the manufacturers.

(f) The approval of any sample shall be only for the characteristics or for the uses named in such approval and no other. No approval of a sample shall be taken in itself to change or modify any contract requirement. When a material has been approved, no additional sample of that material will be considered and no change in brand or make will be permitted. Approved samples of hardware in good condition may be suitably marked for identification and used in the work.

(g) Failure of any material to pass the specified tests will be sufficient cause for refusal to consider, under this contract, any further samples of the same brand or make of that material.

(h) *Test samples* as the Architect may deem necessary, will be procured from the various materials or equipment delivered by the Contractor for use in the work. If any of these test samples fail to meet the specification requirements any previous approvals will be withdrawn and such materials or equipment shall be subject to removal and replacement by the Contractor with materials or equipment meeting the specification requirements, or at the discretion of the Owner the defective materials and equipment may be permitted to remain in place subject to a proper adjustment of the contract price. The costs of the tests will be borne by the Owner except where laboratory tests as hereinafter specified are required by the specifications.

39. Laboratory Tests.—(a) Any specified laboratory tests of material and finished articles to be incorporated in the work shall be made by bureaus, laboratories or agencies approved by the Architect, and the reports of such tests shall be submitted to the Architect. The cost of the testing shall be paid for by the Owner.

(b) The Contractor shall furnish all sample materials required for these tests and shall deliver same without charge to the testing laboratory or other designated agency when and where directed by them.

40. Heating.—The Contractor shall provide heat, fuel, and services as necessary to protect all work and materials against injury from dampness and cold until final acceptance of all work and material in the contract, unless the building or buildings are fully occupied by the Owner prior to such acceptance, in which case the Owner shall assume all expenses of heating from date of occupancy. The Contractor shall provide heat as follows:

(a) At all times during the placing, setting, and curing of concrete, provide sufficient heat to insure the heating of the spaces involved to not less than 50 degrees Fahrenheit.

(b) From the beginning of the application of plaster and during the setting and curing period, provide sufficient heat to produce a temperature in the spaces involved of not less than 50 degrees Fahrenheit.

(c) For a period of ten days previous to the placing of interior wood finish and throughout the placing of this and other interior finishing, varnishing, painting, etc., and until final acceptance of the work or until full occupancy by the Owner, provide sufficient heat to produce a temperature of not less than 70 degrees Fahrenheit.

41. Climatic Conditions.—When so ordered by the Architect, the Contractor shall suspend any work that may be subject to damage by climatic conditions.

42. Extras.—Except as otherwise herein provided, no charge for any extra work or material will be allowed unless the same has been ordered in writing by the Owner and either the price stated in such order or definite acknowledgment made that a change in price is involved subject to later determination.

43. Changes in Work.—(a) The Owner may at any time, by a written order, and without notice to the sureties, make changes in the drawings and specifications of this contract and within the general scope thereof (except that no change will be made which increases the total contract price to an amount more than 20 percent in excess of the original contract price, without notice to sureties). In making any change, the charge or credit for the change shall be determined by one of the following methods as selected by the Owner:

(1) The order shall stipulate the mutually agreed price which shall be added to or deducted from the contract price. If the price change is an addition to the contract price it shall include the Contractor's overhead and profit. On any change which involves a net credit to the Owner, no allowance for overhead and profit shall be figured.

(2) By estimating the number of unit quantities of each part of the work which is changed and then multiplying the estimated number of such unit quantities by the applicable unit price (if any) set forth in the contract or other mutually agreed unit prices. The number of calendar days (if any) required to complete the modification shall be noted in the contractor's proposal.

(3) By ordering the Contractor to proceed with the work and to keep and present in such form as the Owner may direct a correct account of the cost of the change together with all vouchers therefor. The cost may include an allowance for overhead and profit not to exceed 15 percent of the net cost. The cost may also include all items of labor or materials, the use of power tools and equipment actually used, power and all items of cost such as public liability and workmen's compensation insurance, pro rata charges for foremen, also social security, old-age and unemployment insurance; however, no percentage for overhead and profit shall be allowed on the items of social security, old-age and unemployment insurance. If deductions are ordered, the credits shall be the net cost. Among the items considered as overhead are included insurance other than mentioned above, bond or bonds, superintendent, timekeeper, clerks, watchman, use of small tools, incidental job burdens, and general office expenses.

(b) Under methods (a-1) and (a-3) the Contractor's proposal shall include a complete itemization, indicating separately: (1) Quantities of material, (2) unit cost of

materials, (3) total hours for each classification of labor, (4) hourly rates applicable for all labor classifications, (5) Social Security, Old Age, and Unemployment Insurance, (6) Contractor's allowance for overhead and profit, and (7) number of calendar days (if any) required to complete the additional work.

(c) In figuring changes, instructions for measurement of quantities set forth in the specifications shall be followed.

(d) If any part of the work as installed be at variance with the contract requirements, the Owner may, if he finds it to be in his interest, allow all or any part of such work to remain in place, subject to a proper adjustment in the contract price.

44. Taxes.—The Contractor shall, without additional expense to the Owner, pay all applicable Federal, State, and local sales and other taxes, except taxes and assessments on the real property comprising the site of the project.

45. Patents.—The Contractor shall hold and save the Owner and his officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses, for or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the contract, including its use by the Owner, unless otherwise specifically stipulated in the Contract Documents.

46. Assignments.—The Contractor shall not assign the whole or any part of this contract or any monies due or to become due hereunder without the written consent of the Owner and of all sureties executing any bonds on behalf of the Contractor, in connection with said contract. In case the Contractor assigns the whole or any part of said contract or assigns all or any part of any monies due or to become due under said contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due the Contractor, or otherwise, shall be subject to all of the terms and conditions of said contract and of all instruments that are now or may hereafter be amendatory thereof or supplemental thereto, the rights and remedies of the Owner thereunder or arising by operation of law and to the liens of all persons, firms, and corporations for services rendered or materials supplied in connection with the performance of said contract.

47. Specifications and Drawings.—(a) The Contractor shall keep on the work a copy of the drawings and specifications including all addenda and authorized change orders and shall at all times give the Owner, Architect, State agencies (on projects included in 1(b) page 2), and the Surgeon General and their authorized representatives access thereto.

(b) All drawings and specifications and copies thereof furnished by the Architect are his property and shall not be used on other projects without his consent. Upon completion of this project all copies of the drawings and specifications except the signed contract sets are to be returned to the Architect upon his request.

48. Materials, Services, and Facilities.—It is understood that except as otherwise specifically stated in the Contract Documents, the Contractor shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, superintendence, temporary construction of every nature and all other services and facilities of every nature whatsoever necessary to execute, complete, and deliver the work within the specified time.

49. Superintendence by Contractor.—The Contractor shall give his personal superintendence to the work or have a competent foreman or superintendent, satisfactory to the Architect, on the work at all times during progress, with authority to act for him.

50. Inspection.—(a) All material and workmanship (if not otherwise designated by the specifications) shall be subject to inspection, examination, and test by the Architect at any and all times during manufacture and/or construction and at any and all places where such manufacture and/or construction are carried on. The Architect shall have the right to reject defective material and workmanship or require its correction. Rejected workmanship shall be satisfactorily corrected, and rejected material shall be satisfactorily replaced with proper material without charge therefor, and the Contractor shall promptly segregate and remove the rejected material from the premises. If the Contractor fails to proceed at once with the replacement of rejected material and/or the correction of defective workmanship the Owner may, by contract or otherwise, replace such material and/or correct such workmanship and charge the cost to the Contractor, or may terminate the right of the Contractor to proceed as provided in paragraph 31, above, the Contractor and Surety being liable for any damage to the same extent as provided in said paragraph 31 for terminations thereunder.

(b) The Contractor shall furnish promptly, without additional charge, all reasonable facilities, labor, and materials necessary for the safe and convenient inspection and tests that may be required by the Architect. All inspections and tests shall be performed in such manner as not unnecessarily to delay the work. Special, full-size, and performance tests shall be as described in the specifications. The contractor shall be charged with any cost of inspection when material and workmanship is not ready at the time inspection is requested by the Contractor.

(c) Should it be considered necessary or advisable by the Architect at any time before final acceptance of the entire work, to make an examination of work already completed by removing or tearing out same, the Contractor shall on request promptly furnish all necessary facilities, labor, and material. If such work is found to be defective in any material respect, due to the fault of the Contractor or his subcontractors, he shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the contract, the actual cost of labor and material necessarily involved in the examination and replacement, plus 15 percent, shall be allowed the Contractor and he shall, in addition, if completion of the work has been delayed thereby, be granted a suitable extension of time on account of the additional work involved.

51. Final Inspection.—When the work is satisfactorily completed the Contractor shall notify the Owner, in writing, that the work will be ready for final inspection and test on a definite date which shall be stated in such notice. The notice shall be given at least ten (10) days in advance of said date and shall be forwarded through the Architect who will attach his endorsement as to whether or not he concurs in the Contractor's statement that the work will be ready for final inspection or test on the date given, but such endorsement shall not relieve the Contractor of his responsibility in the matter.

52. Guarantee of Work.—(a) Except as otherwise specified all work shall be guaranteed by the Contractor against defects resulting from the use of inferior materials, equipment, or workmanship for one year from the date of final completion of the contract, or from full occupancy of the building by the Owner, whichever is earlier.

(b) If, within any guarantee period, repairs or changes are required in connection with guaranteed work, which, in the opinion of the Architect, is rendered necessary as the result of the use of materials, equipment, or workmanship which are inferior, defective, or not in accordance with the terms of the contract, the Contractor shall, promptly upon receipt of notice from the Owner, and without expense to the Owner—

(1) place in satisfactory condition in every particular all of such guaranteed work, correct all defects therein; and

(2) make good all damage to the building or site, or equipment or contents thereof, which, in the opinion of the Architect, is the result of the use of materials, equipment, or workmanship which are inferior, defective, or not in accordance with the terms of the contract; and

(3) make good any work or material, or the equipment and contents of said building or site disturbed in fulfilling any such guarantee.

(c) In any case wherein fulfilling the requirements of the contract or of any guarantee, embraced in or required thereby, the Contractor disturbs any work guaranteed under another contract, he shall restore such disturbed work to a condition satisfactory to the Architect and guarantee such restored work to the same extent as it was guaranteed under such other contract.

(d) If the Contractor, after notice, fails to proceed promptly to comply with the terms of the guarantee, the Owner may have the defects corrected and the Contractor and his surety shall be liable for all expense incurred.

(e) All special guarantees applicable to definite parts of the work that may be stipulated in the specifications or other papers forming a part of the contract shall be subject to the terms of this paragraph during the first year of the life of such special guarantee.

Exhibit H

1971 Claim by Kidde

Claim of Contractor

for

Time Extension for Excusable Delays

and

Contract Price Adjustment for Extra Costs

Due to Delays for Which Owner is Responsible

Contract Date October 29, 1968

Between

The Mount Sinai Hospital (Owner)*

And

Walter Kidde Constructors, Inc. (Contractor)

Contract for

Stage I Additions and Alterations

at

The Mount Sinai Hospital

Hartford, Connecticut

*Contract was assigned on November 20, 1968 to State of Connecticut Health and Education Facilities Authority

[One copy given to Architect 7/14/71]
" " " " Owner 7/14/71

EXHIBIT
AD-7

Walter KIDDE CONSTRUCTORS Incorporated. 19 Rector St., New York, N.Y. 10006 · (212) 425-3030
A Boise Cascade Company

E. Todd Wheeler and
The Perkins and Will Partnership
One North Broadway
White Plains, New York 10601

Gentlemen:

Under our contract with the Mount Sinai Hospital dated October 29, 1968, for Stage I Additions and Alterations at the Mount Sinai Hospital, Hartford, Connecticut, we hereby present our claim for time extension and contract price adjustment for delays for which the Owner is responsible.

I. BACKGROUND

1. Invitations for bids for this project were issued under date of November 22, 1967. When bids were opened on January 30, 1968, it was determined that Kidde was the low bidder, with a base bid of $13,900,000.

2. We were informed that our low bid exceeded the hospital's budget. By letter of February 15, 1968 (Exhibit 1), the Architect stated that the Hospital Building Committee was willing to enter into negotiations on cost reduction measures with a view to reducing the scope of work and price to the point where award could be made. An extended period of

negotiations ensued. Both parties made suggestions or proposals for scope reductions, and Kidde determined for each the amount the bid could be reduced.

3. Among the proposed scope changes were two which have become major factors in our claim and which will be discussed in detail hereinafter. These are:

a. A change in phasing so as to permit work to proceed simultaneously on the east and west wings of the hospital, thereby reducing the construction time. This change included furnishing by Kidde of two temporary buildings for use by the hospital.

b. Redesign of the west wing foundation so as to eliminate the need for sheet piling.

4. By the end of April 1968, negotiations had reached the point at which a tentative agreement on scope reduction and contract price was feasible. Accordingly, the Architect prepared a notice of intent to award (Exhibit 2) and Memorandum of Agreement (Exhibit 3). The latter was signed by Kidde on May 7, 1968, and forwarded to the Architect by letter of the same date (Exhibit 4).

5. By letter of June 27, 1968 (Exhibit 5), the Architect furnished us thirty copies of revised plans and specifications for the reduced scope of the proposed contract.

6. Even though tentative agreement on reduced scope and price had been reached by May 7, 1968, considerable time was to elapse, because of the Owner's financing problems, before the contract was actually executed. In addition, negotiations on specific contract terms continued.

By letter of July 8, 1968 (Exhibit 6), the Architect set July 23 as a proposed date for formal signing. By letter of July 19 (Exhibit 7), this was extended to August 5.

7. Continual delay by the Owner led the Architect to ask us for our appraisal of the obligations we would incur if we proceeded in advance of signing the contract. By letter of August 7, 1968 (Exhibit 8), we furnished such an appraisal and stated the conditions under which we would proceed in advance of contract signing. These conditions were acceptable to the Owner and, under date of August 12, 1968, a Memorandum of Understanding (Exhibit 9) was signed by both parties. By our letter of August 16, 1968 (Exhibit 10), we forwarded signed copies of this Memorandum of Understanding to the Architect.

8. Acting under the Memorandum of Understanding, we began work at the site on Monday, August 19, 1968. Negotiations on the terms of the proposed contract continued. By letter of October 22, 1968 (Exhibit 11), we made certain suggestions as to the contract wording, to which the Owner agreed by signature on the letter. The contract itself was thereupon executed, under date of October 29, 1968, in the amount of $14,129,600 (base bid plus Alterates 6, 8, and 9), and at the same time Change Orders 1 through 5 were executed, incorporating the changes agreed to in the negotiations and reducing the contract amount to $12,804,383 (Exhibit 12). On November 20, 1968, the contract was assigned to the State of Connecticut Health and Education Facilities Authority (See attachment to Exhibit 12).

9. In the meantime, acting under the tentative agreement of May 7 (Exhibit 3), and assuming that award would be made by August 5 (Exhibit 7), we prepared a detailed construction schedule for the job (Exhibit 13).

This schedule was forwarded to the Architect by our letter of August 12, 1968 (Exhibit 14), in which we pointed out that any delay in award beyond August 5, 1968, would automatically extend the schedule by the number of days award was delayed. Further, we reminded the Architect, the schedule showed completion considerably in advance of the completion date. This resulted from the change in phasing referred to in paragraph 3a above, for which a substantial credit had been given in the contract price.

10. With the rephasing, the schedule (Exhibit 13) showed a completion date of July 25, 1970, or 719 calendar days after the assumed start of August 5, 1968. This compression of schedule was achieved, as the parties had agreed, by provision of two temporary buildings, which were to be occupied by the hospital, allowing work on both wings to proceed simultaneously. The schedule clearly depicted this arrangement.

11. No objection to the schedule was received from the Architect or the Owner. Inasmuch as the schedule was consistent with agreements made during the scope and price negotiations, it is considered to represent the agreement of the parties as to how the work was to be scheduled.

12. When the contract forms were prepared for execution (Exhibit 12), the Owner made no change in the number of calendar days (1,100) by which completion could be delayed before assessment of liquidated damages. In our view, the effect of this situation is that we, as Contractor, were obligated to take all reasonable steps to attempt to complete the work in 719 calendar days (because we had agreed in negotiations), but that we could not be assessed liquidated damages unless we failed to complete within 1,100 days. In the event we were excusably delayed, we were entitled to extension of both of these time limits, so as to leave us in the same position after the delay as before. It should be noted that the

liquidated damage provision applies to only part of the contract, while the scheduled completion date applies to the entire contract.

13. Between August 19, 1968, when we started work, and October 29, 1968, date of the contract, there were a number of excusable delays. In order to allow for these delays, the parties agreed (Exhibit 11) that all delays experienced prior to October 21, 1968, would be offset by establishing October 1, 1968, as the contract starting date. Accordingly, all of our time extension requests are based on this agreed starting date. In other words, the 56 days between August 5 and October 1 has been included in each calculation of the excusable delay.

14. As described above, the reduced contract price and compressed schedule were based on the understanding arrived at in the negotiations that the hospital would make work areas available to us, in accordance with our schedule of August 1968 (Exhibit 13), so as to permit work simultaneously on both wings. Accomplishment of the work by Kidde at the reduced price and in the reduced time period was dependent on full cooperation on the part of the Owner in making areas available as scheduled and in providing answers to criteria and design questions in a timely manner.

15. Subsequent to award to the contract the Owner did not make areas available for construction as scheduled and did not in many cases provide criteria as required to meet construction schedules. Further,

work was delayed by changed conditions, design problems and Owner instructions. All of these situations, which were the responsibility of the Owner, substantially increased the cost of our work over what it would have been in the absence of these problems. We accordingly assert a claim for contract price adjustment for the amount of these increased costs. The details of this claim are set forth below for each category of delay.

II. DELAY ON TEMPORARY BUILDINGS

16. Under the original phasing for this project, the following general sequence was contemplated: Erect new portion of east wing, move facilities from old west wing to east wing, demolish old west wing, erect new west wing, move facilities into new west wing, alter old east wing. It was estimated that a full three years or more would be required for the work.

17. In order to shorten the construction period, it was proposed that the Contractor furnish and erect, at his own expense, two additional temporary buildings (in addition to one already called for), into which the facilities in the old west wing could be located pending construction of the new west wing. This would have the advantage of permitting earlier demolition of the old west wing, earlier erection of the new west wing, and work concurrently on the two wings of the hospital.

18. It was estimated by Kidde that about one year could be saved in construction time. The savings to be realized were sufficient to permit Kidde to pay for the two additional buildings and, in addition, to grant a

substantial credit in the price negotiations. For its part, the hospital agreed to pay for any interior work in the temporary buildings which they might desire above and beyondthe minimum required for transfer of their facilities.

19. In our various proposals on scope reduction, presented during the negotiations referred to above, we included a net price reduction of $100,000 (after allowing for extra cost of the temporary buildings and their removal) for the proposed phasing change. Our proposals also included the following suggested rewording of the phasing specifications:

A. 05 - Completion of Contract

Liquidated Damages

1. Revise construction schedule to reflect a project completion date of 2-1/2 years after award of contract.

SGC. 01.64 (b)

Phasing. Change to read:

(b) Phasing: The work shall be done in two major phases:

1. Demolition for and construction of east and west buildings.

2. Relocation and alteration of existing buildings to remain.

20. At a meeting on June 19, 1968 (see Minutes, Exhibit 15), the provision of the two temporary buildings was discussed. At this meeting it was indicated that the contract would be signed prior to August 1.

21. Both parties proceeded on the assumption that the proposed contract would provide for the phasing change and the furnishing and use of the two temporary buildings. By letter of July 23, 1968 (Exhibit 16), the Architect requested a city variance on the temporary buildings. This variance was granted by letter of August 13 (Exhibit 17). Meanwhile, Kidde prepared the construction schedule (Exhibit 13) which was submitted to the Architect (paragraph 9 above).

22. By letter of July 24, 1968 (Exhibit 18), the Architect furnished us copies of Drawing SKA-1, showing proposed interior work in the two temporary buildings. A review of the work proposed indicated that it would cost on the order of $100,000. This was the first indication we had of the extensive nature of the interior finish which the hospital would require; previous information had indicated a value of about $10,000. Our schedule (Exhibit 13) was based on interior finish work of about the latter magnitude.

23. When the revised plans and specifications for the reduced scope were issued by the Architect, they did not include the revised wording suggested by Kidde (paragraph 19 above). In lieu thereof, the Architect completely revised the phasing schedule shown on Drawings A-53 and A-54. In addition, provision for the temporary buildings was included in the letter agreement of October 22, 1968 (Exhibit 11). Together with our schedule (Exhibit 13) and the accepted price reduction, this letter agreement and the revisions to Drawings A-53 and A-54 are considered by Kidde to constitute agreement on the revised phasing described above.

24. The demolition of the old west wing of the hospital was an essential prerequisite to the erection of the new west wing, since they occupied the same site. This demolition in turn depended on the Owner's move of his facilities from the west wing into the temporary buildings or elsewhere. However, there was a small portion of the demolition that could be done prior to completion of the Owner's move. Hence, our schedule divided the demolition into two parts, the part that could be done before the Owner's move and the part that had to wait until he moved. It is the latter portion that was seriously delayed and with which we are concerned.

25. There were actually three temporary buildings in the contract. The first, however (No. 1) was constructed by another contractor, and our work in connection therewith was limited to certain interior finish. The two buildings furnished by us were numbered 2 and 3 by the Architect.

26. Our original schedule (Exhibit 13) showed temporary buildings 2 and 3 to be completed between October 10 and 18 (event 192), with the Owner's move to be complete between October 24 and November 1 (event 244). This would have permitted start of the final phase of the demolition of the old west wing (event 1508) by November 1, 1968, or the early start date of the activity.

27. The erection of Building 3 was completed on October 18, or on schedule. Since Building 2 is a twin of Building 3, it is reasonable to say that, by employing another crew, we could also have completed this building on time. However, the Owner failed to give us access to the site

of Building 2 on time, which was occupied by the Owner's "preconstruction" contractor for 19 days after we were ready to erect the building.

28. After this delay we were subsequently held up on Building 2 because of a jurisdictional dispute between the carpenters and laborers. This delay would not have ocurred in the absence of the delay of preconstruction contractor, as the building would have been erect before the jurisdictional dispute took place.

29. A more serious delaying effect on the temporary buildings resulted from the extensive partition and finish work directed by the Owner. As pointed out above (paragraph 22), our original schedule had not contemplated work of the magnitude we were subsequently given. Further, our price proposal, as negotiated on the reduced scope, had not been based on anything of this scale. It was instead based on being able to start demolition of the west wing in accordance with our schedule (Exhibit 13).

30. Not only did the Owner delay the temporary buildings by increasing the scope of the interior work, but in addition he made numerous changes in the interior layout between July and December 1968. A brief listing of these changes is contained in Exhibit 19.

31. As a result of these delays, Building 1 was not completed until December 10, 1968, Building 2 until February 4, 1969, and Building 3 until January 2, 1969. The total overall excusable delay for event 192 was thus 109 calendar days (October 18 to February 4).

32. Further delays occurred in the Owner's move out of the old west wing. These will be discussed in Part V, below.

III. DELAY CAUSED BY PRE CONSTRUCTION CONTRACTOR

33. The Owner awarded a contract for certain preliminary work to be done in advance of the main construction contract which was subsequently awarded to Kidde. The term "preconstruction contract" has been used by the Architect to refer to this contract.

34. The work of the preconstruction contractor had to be done in advance of certain critical items in our contract. Delay of this contractor (Southern New England Contracting Co., referred to hereinafter as SNEC) on the work precedent to these critical items would seriously delay and increase the cost of our work. Such delays did occur, and to the extent that they increased our cost, they are factors in this claim.

35. More than one delay on the part of SNEC occurred. The delay to temporary building 2 has been discussed above. Another serious delay involved the north service unit of the east wing. This was a portion of the existing east wing (see Drawing A-53) that had to be demolished before we could start erection of the new portion of the east wing. This demolition is designated as activity 248-256 on our construction schedule. This activity is on the critical path and hence any delay to it delays completion of the entire contract. Certain work by SNEC had to be done before we could start on this activity.

36. By November 19, 1968, we had completed precedent activities to the point at which we should have been able to start on activity 248-256. However, SNEC was still working in the area and continued through the winter. The area was finally made available to us on February 20, 1969.

A period of 7 days was required to movilize our demolition subcontractor, who began work on February 27. The total excusable delay was, therefore, 100 calendar days. Since this delay was caused by lateness of another contractor under the Owner's supervision and control, the additional costs incurred by Kidde as a result of such lateness constitute a contract charge entitling Kidde to reimbursement.

IV. DELAY ON BRICK APPROVAL

37. Article 4A.04 of the specifications required Architect approval of samples of face brick and of sample panels of brickwork. Article 4A.05 states that the face brick to be used will be selected by the Architect.

38. Our original schedule calls for early start of brickwork by December 5, 1968 (activity 376-380). At a job meeting on August 21, 1968 (see Minutes, Exhibit 20), the Architect stated that selction of brick would be made by September 25. Our job superintendent, Mr. Lahey, stated that he wanted the brick on the job by November 15. These statements were repeated at job meeting 2 on September 4, 1968 (see Minutes, Exhibit 21).

39. We erected sample panels on September 25 for the Architect's review (Daily Report 9/25/68, Exhibit 22). The Architect inspected the samples on October 4, 1968, and selected the type desired. However, he requested that another panel be laid up to enable selection of color range. (See Minutes, job meeting No. 3, October 9, 1968, Exhibit 23)

40. Final selection of color range was made on October 25 (see Minutes, job meeting No. 4, October 24, 1968, Exhibit 24). We promptly placed our order for brick, with the first shipment scheduled to be on the job by December 29, 1968. This was 24 days late, according to our schedule.

41. Early in January, we learned that the Architect had stopped shipment of the brick from the supplier (see our letter to Architect of January 3, 1968, Exhibit 25), and had modified the requirements for the brick. This resulted in a further delay of delivery until January 25, 1969.

42. Based on our schedule the total delay in brick delivery was 51 calendar days (December 5 to January 25). This delay, however, in wholly concurrent with other delays considered herein. If we are granted the time extensions requested for these other delays, no time extension will be required for the brick delay.

V. DELAY ON CONNECTING LINK

43. Between the old west wing of the hospital and the east wing, there was a narrow section which has been referred to as the "connecting link" in correspondence between the parties. This connecting link had to be demolished along with the west wing itself to permit the new west wing to be built.

44. The contract drawings do not indicate any hospital facilities within the connecting link. Neither does the phasing schedule show that any facility is to be moved out of this link. The assumption made by the contractor in scheduling the work was that the phasing movements, as spelled out in the contract, were complete, and that, upon completion of preceding items, demolition of the west wing and the connecting link could proceed as scheduled.

45. Early in 1969, we were informed by the Owner that we would be given access to the connecting link along with the west wing, but that provision first had to be made for a new emergency observation room to accommodate a similar facility then located in the connecting link. (See our letter of March 10, 1969, Exhibit 26.) No such requirement was contained in the contract, and our contract price and schedule had not provided for such a delay.

46. The effect of this action by the Owner was to force us either to use a double operation on the demolition work or to delay demolition until the entire portion to be demolished was made available to us. We elected to do the former as more economical. Our subcontractor began west wing demolition March 10, 1969, and proceeded until April 3, at which point work had to cease because of lack of availability of the connecting link. The subcontractor demobilized.

47. The connecting link was made available to us on or about April 22. Our subcontractor was remobilized by April 29 and substantially completed the west wing demolition on May 14.

48. Since, in the absence of earlier delays (see paragraph 26 above), we could have begun demolition of the old west wing by its scheduled early start date, it is reasonable to state that, in the absence of the delay on the connecting link, it could have been completed by the early completion date, or Nov. 14, 1968. It was actually completed on May 14, 1969, or 181 days late. This is the amount of time extension we are entitled to at this point.

49. During the above delay, it was determined that we would have to reroute the main 12-inch steam lines in corridor E120 due to the impossibility of routing them as shown on the contract documents. This delay also affected the Owner's move into the temporary buildings. This delay is, however, concurrent with the other delays up to this point.

VI. FOUNDATION DELAY, WEST WING

50. Drawings S-6 and S-13 of the original bid documents show a row of steel sheet piling along the east face of the foundation for the new west wing. The purpose of this sheet piling was to protect the east wing of the hospital from foundation failure during the excavation for the new west wing.

51. During the cost reduction negotiations referred to in paragraphs 2-4, above, the Architect asked for suggestions as to possible scope reductions that might reduce the cost of the job. We suggested that, by suitable redesign of the west wing, such as by moving the new building away from the east wing, it might be possible to eliminate this sheet piling. A price reduction of $80,500 was offered by Kidde for this item, and this was included in the Memorandum of Agreement of May 7, 1968 (Exhibit 3).

52. The revised drawings were furnished by the Architect by letter of June 27 (Exhibit 5). These show that the Architect has moved the west wing a distance of 7'6" farther away from the east wing and has specifically deleted the sheet piling previously called for. This was consistent with our suggestion and with the price reduction agreed to. Relying

on the Architect's redesign as adequate, we confirmed the price reduction by acceptance of the contract.

53. Subsequent to demolition of the old west wing, excavation proceeded for the foundations of the new west wing. Early in July 1969, we began to encounter conditions in the area where the sheet piling had been deleted which indicated to our job superintendent that it would be dangerous to proceed in accordance with the Architect's redesign. Accordingly, on June 10, 1969, he addressed a letter (Exhibit 27) to the Architect, pointing out the conditions, and requesting authorization to add part of the sheet piling which had been deleted.

54. In reply, dated June 13, 1969 (Exhibit 28), the Architect referred to certain clauses of the specifications, and stated that on the basis of these, we should proceed without delay and at no change in the contract amount. The specifications referred to are general provisions relating to excavation , shoring, sheet piling and various protective measures.

55. Inasmuch as it was obvious that the general specifications referred to by the Architect did not apply to an item of work that had been specifically deleted by agreement between the parties, our superintendent, by letter of June 16, 1969 (Exhibit 29), again requested authorization for the work.

56. At about this time an inspection of the excavation was made by the Building Department of the City of Hartford. Following this examination, they issued a stop order (Exhibit 30), directing that work be stopped pending a complete investigation and proposal by the structural engineer. We informed the Architect of this development in our letters of June 24 and

26 (Exhibits 31 and 32). By letters of June 26 and 30 (Exhibits 33 and 34), the Architect reiterated his position that a solution to the problem was our (Kidde's) responsibility.

57. By our letter of July 1, 1969 (Exhibit 35), we responded to the Architect in som detail, pointing out the inappropriateness of his instructions and requesting that he take immediate action to redesign the work to meet the requirements of the City of Hartford. In response, by letter of July 3, 1969 (Exhibit 36), the Architect agreed to obtain advice on the matter from a soils expert, although still maintaining that the contractor was responsible. To assist the investigation we were directed on July 3 (Exhibit 37) to excavate a series of observation trenches. Our letter of July 7 (Exhibit 38) acknowledged the Architect's action.

58. At a field office meeting on July 31, 1969, we were furnished the Architect's proposed solution to the problem. This is described in Mr. S. Marenberg's letter of July 23, 1969 (Exhibit 39), with enclosures, and in the Architect's letters of July 25 and 28 (Exhibits 40 and 41). Approval of the plan was given in the letter of the City of Hartford dated July 25, 1969. (Exhibit 42).

59. Upon examination of the plan developed by the structural engineer for the Architect, we were of the opinion that it was both extremely unsafe and uneconomical. After considerable discussion, the Architect agreed that we could submit for review a plan of our own. This was confirmed in our letter of August 11, 1969 (Exhibit 43).

60. Our proposed plan, which consisted of underpinning the footings on the west side of the east wing, was shortly developed and presented to the City by S. Marenberg's letter of August 14, 1969 (Exhibit 44). Approval was granted by the City and confirmed in the Architect's letters of August 18 and 19 (Exhibits 45 and 46). We acknowledged receipt in our letter of August 21 (Exhibit 47).

61. The Architect has continued to hold to the position that this additional foundation work does not constitute a contract change, and that the contractor is entitled neither to payment for the extra cost nor to a time extension for the delay. We cannot agree to this view, as was pointed out in our letter of July 1, 1969 (Exhibit 35). The parties agreed that a credit would be given for the deletion of the sheet piling, and the Architect agreed to redesign the foundations so as to eliminate the need for it. Since events showed the redesign to be inadequate for the conditions, only the following alternate conclusions can be drawn:

a. Either the redesign was inadequate, requiring a further change in design, in which case the contractor is entitled to a time and price adjustment because of the required change.

b. Or the redesign was proper on the basis of known site conditions, in which case the conditions actually encountered were of the type referred to in Article 9 (b) of the General Conditions of the contract. In this event, the contractor is entitled to a time and price adjustment for changed conditions.

62. The situation requiring the change was encountered on June 6, 1969. After receipt of the approval of the underpinning on August 18, a period of 30 days was required to mobilize and perform the underpinning, which was completed on September 18. The total time extension due on the west wing is therefore 104 calendar days. This is to be added to the 54 days agreed to in contract negotiations (paragraph 13), and the 109 days mentioned in paragraph 31, for a total of 265 days to this point.

VII. DELAY ON EAST DUCT SHAFT, EAST WING

63. The contract calls for construction of a new duct shaft in the vicinity of columns 32K and 32L, east wing, extending from the third level to Penthouse No. 2 on the roof of the east wing. In addition, extensive modifications to the equipment in Penthouse No. 2 are called for. The evident purpose of this work is to supply an increased volume of conditioned air to the enlarged east wing.

64. The phasing steps set forth in the contract do not specifically mention this duct shaft and penthouse work. Instead they are lumped in with the item of alterations. Paragraph 64 of the Supplementary General Conditions states that the hospital will continue its normal functions during the course of construction, that shutdowns of service will be done so as to result in least practicable interference with normal functions, and that shutdown of air conditioning systems will be done during cooler months. Paragraph 15A.1.29 of the specifications also calls for minimum interference

with regular operation of existing facilities.

65. During the fall of 1969, the mechanical contractor was engaged in detailed planning of work on the HVAC systems in the east wing. In the course of this planning, he arrived at tentative estimates as to the minimum shutdown periods that would be required for the shaft and penthouse work. At a meeting called by the contractor on November 20, 1969, the problem of shutdown of service was discussed. (See minutes Exhibit 48.)

66. At another meeting on November 25, 1969 (see minutes, Exhibit 49), attended by representatives of the Architect, the Contractor and the hospital, the problem was again discussed. At a third meeting on December 4, 1969 (see minutes, Exhibit 50), attended by representatives of the hospital and the contractor, we were informed that the hospital could not afford the long shutdown period that the mechanical subcontractor had stated was necessary for him to perform his work.

67. In a letter of December 15, 1969 (Exhibit 51), the Architect criticized us for lack of an up-to-date schedule. In our reply of December 23 (Exhibit 52), we pointed out that our schedule was held up due to the east wing phasing problem and lack of answers from the Architect on that problem.

68. By letter of December 30, 1969 (Exhibit 53), the Architect furnished us a proposed phasing of the work in the area of the duct shaft and Penthouse No. 2. This was reviewed by the contractor and subcon-

tractors at a meeting on January 9, 1970 (see notes, Exhibit 54), as a result of which we developed comments on the proposed phasing and presented them to the Architect in our letter of January 13, 1970 (Exhibit 55).

69. The entire problem was reviewed at a meeting with the Architect on January 22, 1970 (see minutes, Exhibit 56). In our letter of February 12, 1970 (Exhibit 57), we again pointed out that an extensive shutdown period was required under all of the phasing suggestions that had been made to that date. This matter was also referred to in our letter of February 17 (Exhibit 58).

70. In letters of February 18 and March 17, 1970 (Exhibits 59 and 60), our mechanical subcontractor described in some detail the delays affecting his work in the east wing and listed the areas in which he was ready to perform work.

71. In the discussions between the Architect and contractor during this period, various suggestions were made for measures to reduce the shutdown time. One of these was for enlargement of Penthouse No. 2 to allow placement of new equipment while the old equipment was still in operation. The Architect adopted this suggestion and prepared revised plans for the work. We received these plans (sketches SK-A75, SKH-122 and SK-S10) on February 26, 1970. These were forwarded to subcontractors for proposals. On March 11, 1970, we forwarded our consolidated proposal for this change (Y-3) to the Architect. The Owner and Architect expressed dissatisfaction with the price and, after protracted negotiations, directed us

on May 8, 1970, to proceed with the change on a time-and-material basis. This was confirmed by letter of June 5, 1970 (Exhibit 61). Meanwhile the Architect's mechanical engineers, Syska & Hennessey, furnished a revised phasing schedule and requested our comments. These comments were furnished by our letter of May 7, 1970 (Exhibit 64).

72. The shaft and penthouse delay affects event 1372 on the original schedule. This event was scheduled to occur September 2, 1969, with only one day of float, so that it was essentially critical. Assuming 7 days for start-up and 210 days for performance of the work after notice to proceed on May 8, 1970, the revised date for the occurrence of event 1372 would be December 11, 1970, or 465 days later than the original schedule. We are therefore entitled to a time extension of 465 calendar days on the east wing. So far as the east wing is concerned, this delay is concurrent with any time allowed for delays described earlier in this claim.

73. In discussions with us concerning this delay, the Owner and Architect, appear to have taken the position that the delay is not excusable because of the contract provisions cited in paragraph 64, above. This position is not valid. These provisions call for minimum shut downs or interference with hospital operations. In the context of the bidding information, this can only mean the minimum needed for the performance of the work. As bidders, we had no way of knowing what the operations of the hospital would require, since information was not furnished, and could only estimate from a construction standpoint. If the Owner had wanted us to estimate the cost based on the hospital's operating requirements, he should have spelled out the restrictions in the bidding documents. Lacking such information, we could not provide

for such costs or delays in our bid. Hence, having been subjected to unforeseen costs by the Owner, we are entitled to a contract price and time adjustment.

VIII. X-RAY FACILITIES DELAY, FOURTH LEVEL

74. By letter of November 13, 1968 (Exhibit 65), we reminded the Architect that we needed detailed information on equipment furnished by the Owner, including electrical data and wiring diagrams. Such information is needed both for scheduling the work and for coordination with other work. We again reminded the Architect of this in letters of January 21, 1969 (Exhibit 66), January 27, 1969 (Exhibit 67), March 19, 1969 (Exhibit 68), March 20, 1969 (Exhibit 69), June 13, 1969 (Exhibit 70), June 30, 1969 (Exhibit 71), July 15, 1969 (Exhibit 72), October 17, 1969 (Exhibit 73), October 30, 1969 (Exhibit 74), and January 20, 1970 (Exhibit 75).

75. Contract drawing A-44 contains a listing of equipment for the hospital and indicates which items are Owner-furnished, which are contractor-furnished, and which are installed by the Contractor or by the Owner. It should be pointed out that, even for an item furnished and installed by the Owner, the Contractor generally had to install utility services and for this reason had to have information to lay out and install the utility runs. The most serious delay problem in regard to this equipment concerned the X-ray equipment on the fourth and fifth levels of the east wing. This portion of the claim is limited to the fourth level. The fifth level will be discussed in Section XIII.

76. At a meeting called by the Owner on January 21, 1970 (see minutes, Exhibit 76), we were told that the Owner was considering changes

which affected the fourth level equipment and which might necessitate a stop order on our work. Shortly thereafter we were informally requested to hold up work in the area, and this was confirmed in our letter of February 17, 1970 (Exhibit 58).

77. Discussion of the change occurred at meetings on February 19, March 13, March 18, March 20, April 1, April 3, April 8, April 15, April 22, April 24, April 29, May 6, May 13, May 20, May 27 and June 3, 1970. On April 17 we received drawing E-5A from the Architect showing the proposed changes. Our proposal on the change (J-4) was submitted May 6, 1970. By letter of June 5, 1970 (Exhibit 61), the Architect directed us to proceed on a time and material basis.

78. The delay on the X-Ray facilities affected the lathing and plastering on the third level which had to be held up because the utility runs (conduit) serving the X-ray equipment were located in the area to be plastered. Event 772 on the original schedule is the particular event which was held up by the delay. This event was scheduled to occur on March 9, 1969. Notice to proceed (Exhibit 61) on the change was received June 5, 1970. Allowing [illegible]ys to perform the rough-in work in the change, the revised date for the occurrence of event 772 would be September 3, 1970, or a delay of 553 calendar days. Since this delay exceeds the 465 days due forthe east duct shaft delay, and since the latter generally concurrent, the total time extension due on the east wing for delays so far discussed is 553 days. Inasmuch as the delay was entirely the fault of the Owner, we are also entitled to reimbursement for the extra costs resulting there from.

IX. FOOD SERVICE EQUIPMENT DELAY

79. This contract calls for a kitchen on the second level of the new west wing. Some of the equipment for the new kitchen was to be moved from the old kitchen in the east wing and some was to be new equipment supplied by the Contractor. The furnishing, installation, and moving of the food service equipment was subcontracted by us to the firm of S. Blickman, Inc.

80. Our original schedule called for start of setting kitchen equipment (activity 2368-2372) on July 15, 1969. Allowing 120 days for fabrication and delivery to site, this meant that shop drawings should have been approved by March 15, 1969. However, by that date excusable delays of over five months had already occurred on the west wing, which would allow adjustment in the shop drawing approval date to at least August 15, 1969.

81. Early in 1969, Blickman began preparing shop drawings in the course of which numerous problems were encountered. In letters of April 3 and 8, Blickman requested answers to various questions, which were answered by the Architect's memorandum of May 8, 1969.

82. By letter of June 11, 1969 (Exhibit 77), we submitted shop drawings on the food service equipment and at the same time requested certain information which was still lacking. By letter of July 25, 1969 (Exhibit 78), we reminded the Architect of the urgency of our need for answers to questions previously submitted on the food service equipment.

83. By letter of August 13, 1969 (Exhibit 79), the Architect requested us to hold certain items of equipment until various proposed changes were resolved. We transmitted this to Blickman with our letter of August 15 (Exhibit 80), stating that we were also still awaiting answers to previous questions.

84. By letter of October 31, 1969 (Exhibit 81), we again reminded the Owner of the urgent need for the information, pointing out that our preparatory work was being delayed by lack of the data. In letter of January 2, 1970, (Exhibit 82), Blickman again complained of lack of answers. This was not formally transmitted to the Architect, since the schedule mentioned therein had become obsolete, but was discussed informally.

85. The question of the proposed kitchen changes was discussed by the parties concerned at intervals during the early part of 1970, but because of other delays heretofore discussed the delay did not again become

critical until the summer of 1970. At a meeting on June 3, 1970 (see minutes, Exhibit 83), the Contractor requested a final decision on the proposed kitchen changes by July 1, 1970. This request was repeated at the meeting of June 17, 1970 (see minutes, Exhibit 84).

86. By letter of July 2, 1970 (Exhibit 85), the Architect forwarded to us the Owner's letter of June 26, 1970 (Exhibit 86), listing changes desired in the kitchen equipment. This was received by us July 6, 1970. This was not a direction to proceed but simply a request for a cost proposal. Hence it did not resolve the delay.

87. We promptly forwarded the proposed change to our subcontractors requesting proposals. Some difficulty was encountered by our subcontractors in preparing the proposals because of lack of complete information. However, on August 24 and 25 (Exhibits 87 and 88), we submitted partial proposals covering Blickman's work, and also asking answers to additional questions raised by Blickman.

88. By letter of September 17, 1970 (Exhibit 89), we informed the Owner that a decision had to be made on the kitchen equipment by the end of the month. By letters of September 25, 1970 (Exhibit 90), the Architect forwarded to us the Owner's letter of September 23, 1970 (Exhibit 91), answering Blickman's questions. We were still not given notice to proceed but were requested to submit a revised proposal. We forwarded the Architect's letter to Blickman by our letter of September 29, 1970 (Exhibit 92), and Blickman responded by letter of November 5, 1970 (Exhibit 93). Our proposal (change X-5) was formally submitted to the Architect on November 6, 1970 (Exhibit 94). Final approval was issued

by the Architect on March 4, 1971 (Exhibit 95).

89. In the meantime, Blickman had proceeded with shop drawings on the assumption that final approval would be forthcoming. Numerous questions still arose, however, which were covered in Blickman's letters of November 3 and December 9 (Exhibits 96 and 97). Essentially all of these had been answered by December 18, 1970. Allowing 120 days for fabrication and delivery of equipment after December 18, the subcontractor could be ready for installation by April 17, 1971.

91. The original scheduled date for start of installation (event 2368) was July 15, 1969. It has been shown (Section VI, above) that a time extension of 339 days is due on the west wing for delays previously discussed. This would revise the scheduled date of event 2368 to June 19, 1970. A further delay to April 17, 1971, would result in a time extension of 302 days. The Contractor is therefore entitled to a total time extension on the west wing of 642 calendar days for delays so far discussed, and to reimbursement for extra costs resulting from the delay.

X. DELAY ON WOOD CASEWORK

92. The contract calls for furnishing and installation of a number of items of wood casework. See drawings A-8 and A-34 and Section 11D of the specifications. Article 11D.04 of the specifications lists three suggested manufacturers but allows also an "approved equal." Article 37(c) of the General Conditions also permits the Contractor to substitute, for any specified item, any other product or type of construction which in the judgment of the Architect is equal to that specified.

93. In our bidding on this project, we contacted each of the three manufacturers listed in the specifications plus several others. Bids were submitted by two of the listed manufacturers and two others. None of the bids were completely in conformance with the specifications, as each bidder made one or more exceptions. In informal contacts with the Architect we gained the impression that the product proposed by Jules A. Gourdeau, Inc. (casework manufactured by National Industries), would be acceptable, although we received no approval in writing.

94. After analyzing the bids and the exceptions made by the bidders, we concluded that the product offered by Jules A. Gourdeau met the intent of the specifications and that its type of construction, although different from that described in the specifications, was an "equal" for the purpose to be served. Accordingly, by form letter of December 30, 1968 (Exhibit 98), we requested the Architect to approve Jules A. Gourdeau. This form letter stated that National Industrie "Armorclad" was proposed to be supplied. By letter of January 3, 1969 (Exhibit 99), we supplemented this request by furnishing the Architect a copy of the National Industries catalog (Exhibit 100), which showed the type of construction proposed. Also Gourdeau submitted a letter to the Architect, dated January 24, 1969 (Exhibit 101), informing the latter that Gourdeau proposed to furnish National Industries standard product (Armorclad), which differed in some respects from the specified casework.

95. Under date of February 7 969, the Architect returned our letter of December 30 (Exhibit 98), with the notation "Approved subject to 6" base and cabinets in accordance with contract document details and sizes." Based on this approval and knowing that the Architect was fully aware of

what Gourdeau proposed to furnish, we awarded the subcontract for wood casework to Jules A. Gourdeau, Inc. on March 17, 1969 (Exhibit 102). It should be noted that the only specific objection made to the Gourdeau submittal was the 6" base, which Gourdeau agreed to meet although it is non-standard in the industry.

96. Following submission of color samples and samples of plastic cabinet tops, we submitted on December 9, 1969, shop drawings for the casework, together with another copy of the National Industries brochure (Exhibit 100). On January 19, 1970, the Architect returned the shop drawings with corrections, marked "Revise and Resubmit!" No action was taken on the brochure. On April 20, 1970 we resubmitted the shop drawings, and on June 12, 1970, they were returned approved with minor notations. All of the shop drawings bore Gourdeau's note "All casework to be high pressure decorative laminate as manufactured by National Industries, Adenton, Md., using their standards, sizes and colors." The Architect made no objection to this note.

97. On May 28, 1970, we submitted for approval samples of hardware for the casework. On June 12, the Architect disapproved these samples. By letter of June 17, 1970 (Exhibit 103), the Architect furnished us a sketch showing the drawer pull desired. An examination of the sketch showed it to be equivalent to the pull supplied by Hamilton, one of the three manufacturers listed in the specifications.

98. One of the notes made by the Architect on the original shop drawing submittal called for resubmission of sectional details of the cabinet. In lieu of this, Jules Gourdeau proposed to submit a sample cabinet for

approval. An appointment was therefore made with the Architect's representative to present the sample, with explanation by Gourdeau, at a meeting on July 15, 1970. The sample was obtained, and representatives of Gourdeau and Kidde went to the Architect's site office on July 15, to make the presentation. However, the Architect's representative familiar with the problem did not appear. Another representative of the Architect, who was not acquainted with the matter, was present but was unable to make any decision.

99. By letter of July 27, 1970 (Exhibit 104), the Architect disapproved the sample. No specific reason was given for the disapproval. The letter simply contained the general statement that all cabinet work must comply fully with the specifications.

100. As the approval of casework was becoming critical, we immediately began to determine what steps should be taken in the face of the Architect's untimely disapproval. We noted that the Architect's previous disapproval action on the rather trivial item of drawer pulls (paragraph 97, above) contained a hint that he might be seeking submissions of Hamilton casework. Upon review of Hamilton's bid, however, we found that Hamilton could not supply cabinets with a 6-inch toe space, which the Architect had previously (Exhibit 102) indicated was specifically required. Further, Hamilton had made other exceptions to the specifications, as had other suppliers, so that we were in the position of being unable to find any source who would comply fully with the specifications, as the Architect demanded.

101. Accordingly, we requested another meeting with the Architect, which was held on September 9, 1970. This meeting was attended by representatives of Kidde, Gourdeau, the Architect and the Owner. The Gourdeau representative explained his casework in detail, showing why it was considered to be equal to that specified and thus in compliance with Section 37(c) of the General Conditions. He cited installations containing this casework, which the Architect agreed to check.

102. At the job meeting on September 16, 1970 (see minutes, Exhibit 105), the Architect requested that we submit a sample of what he termed the "specified" cabinet (Hamilton). He stated that he wished to make a comparison between Hamilton and the proposed equal (National Industries) prior to finalizing of any approval. This was the first clear indication we had had that the Architect apparently would agree to nothing but Hamilton. We declined to obtain the sample (see minutes, job meeting, September 23, 1970, Exhibit 106) since the specifications do not require us to submit multiple samples. The Architect's request was repeated at the meeting of October 7, 1970 (see minutes, Exhibit 107).

103. Subsequently, the Architect obtained a sample Hamilton cabinet, and at the meeting on November 11, 1970 (see minutes, Exhibit 108), the Architect stated that he had approved the design and construction of the Hamilton cabinet specified, and directed the Contractor to furnish the specified cabinets. We requested a letter on the matter.

104. By letter of November 17, 1970 (Exhibit 109), the Architect formally disapproved the National Industries cabinets and approved the Hamilton cabinets, or equal. By letter of November 20, 1970 (Exhibit 110), we stated that we would proceed under protest with Hamilton or equal and would inform the Architect of the additional cost and resulting delay.

105. We immediately began negotiations with Hamilton and obtained from them a proposal dated December 18, 1970 (Exhibit 111). Since it contained several exceptions to the specifications, we, by letter of January 5, 1971 (Exhibit 112), submitted them for approval. By letter of February 2, 1971 (Exhibit 113), we reminded the Architect that we had not yet received approval of the casework as proposed by Hamilton. By letter of February 4, 1971 (Exhibit 114), the Architect approved the deviations as proposed by Hamilton.

106. By necessity, therefore, we have been forced to award a subcontract to Hamilton (Exhibit 115), but at an increased cost of $11,260. Further, we are now faced with a potential claim from Gourdeau as a result of terminating his contract after he had incurred extra costs. In addition, the completion of the contract has thereby been delayed. Since the extra costs and delay are, in our opinion, the result of the arbitrary and capricious actions of the Architect, as explained above and in the following paragraph, we are entitled to a price and time adjustment for the extra cost and time involved.

107. The following briefly summarizes our reasons for considering the Architect's actions to have been arbitrary and unreasonable:

a. The Architect approved Jules Gourdeau as the casework supplier, knowing full well what he proposed to furnish. Based on this approval, we awarded the subcontract to Gourdeau.

b. The Architect approved the shop drawings, still knowing what was proposed to be furnished, and taking no significant exception thereto.

c. The first step taken by the Architect, after he apparently began to have second thoughts on the approval, was a disapproval of a rather trivial item, the drawer pulls. In our opinion, the drawer pulls proposed by Gourdeau are equal, in their functional aspect, to those requested by the Architect. The disapproval action is only a pretext for eliminating Gourdeau.

d. The only other significant difference between the two products is the use of flakeboard core in lieu of plywood or hardwood. The Architect has not stated that, for the purpose to be served, the former is not equal to the latter, and we submit that it is.

e. The Architect's action in writing the specifications around the Hamilton product and then allowing no deviations (except those, of course, requested by Hamilton) is a clear violation of the intent, stated in Article 37(c) of the specifications, not to limit competition.

108. The extra cost claimed is included in our claim. As to the extra time due, this is calculated as follows: The schedule event

affected is 2200, start of millwork and casework, Level 1, west wing. The original scheduled date for event 2200 was August 4, 1969. For delays previously discussed (see paragraph 91) we have shown that a time extension of 642 calendar days is due. This would revise the scheduled date of event 2200 to May 8, 1971. With award to Hamilton on March 22, 1971, it is estimated that 20 weeks, or 140 days, will be required for approval of shop drawings, fabrication and delivery of casework. This would result in a new scheduled date of August 9, 1971, for event 2200, which is 94 days after May 8. Accordingly, for delays considered to this point we are entitled to a time extension of 642 plus 94, or 736 calendar days.

XI. DELAY ON WEST DUCT SHAFT, EAST WING

109. Section VII above describes delays involving the east duct shaft of the east wing of the hospital. A similar delay occurred on the west duct shaft of the east wing, as will be described hereinafter.

110. After encountering the difficulties on the east shaft, our mechanical subcontractor began to investigate the west shaft, on the assumption that similar troubles might be found. At the job meeting on February 19, 1970 (see minutes, Exhibit 116), the Contractor reported that the problem was being worked on. At this meeting the Architect offered to prepare a phasing schedule for the west shaft (no schedule is shown in the contract).

111. At the meeting on March 16, 1970 (see minutes, Exhibit 117), the problem of phasing the work in the west shaft so as to coordinate with other activities was discussed in detail. It became ap-

parent that a number of changes in the contract would be necessary, but it was determined that further study by the Architect and his Mechanical Engineer was necessary. The latter agreed to make the study and forward a drawing to the Architect.

112. At the job meeting on March 18, 1970 (see minutes, Exhibit 118), we requested that the drawings be expedited. At the meeting on March 20 (see minutes, Exhibit 119), the Architect reported that the drawings would be completed on March 23. At the meeting on April 1, 1970 (see minutes, Exhibit 120), the Architect reported that some conflicts had been encountered, and that the drawing was still under review. As indicated in minutes of job meeting on April 3, 1970 (Exhibit 121), the Contractor was directed not to proceed, pending possible relocation of the shaft.

113. At the job meeting on April 8, 1970 (see minutes, Exhibit 122), the Architect stated that the Contractor would be requested to make exploratory openings in the west shaft area so as to permit completion of the redesign. These openings were made shortly thereafter. At the meeting on April 15 (see minutes, Exhibit 123), it was reported that the Architect's investigation was continuing.

114. At the job meeting on April 22 (see minutes, Exhibit 124), the Mechanical Engineer reported that the revised drawing would be ready for Architect's coordination on April 29. At the meeting on April 29 (see minutes Exhibit 125), it was reported that the drawing was being reviewed by the Architect. This statement was repeated at the job meetings on May 6 and 13,

1970 (see minutes, Exhibits 126 and 127).

115. At the meeting on May 20, 1970 (see minutes, Exhibit 128), it was indicated that the problems had been solved and that the drawing would be furnished the Contractor on May 27. At the meeting on May 27, 1970 (see minutes, Exhibit 129), it was stated that the Architect's and Engineer's drawings had been completed and that, if approved by the hospital, would be issued to the Contractor by June 1.

116. At the meeting on June 3, 1970 (see minutes, Exhibit 83), it was reported that the drawings (SKA-83 and SKH-124R) had been issued. However, the Contractor indicated that further clarification was needed, and the Architect agreed to review them with the Contractor during the week. At the meeting on June 10, the Architect requested the Contractor to develop a phasing schedule for the west shaft work.

117. At the job meeting on June 17, 1970 (see minutes, Exhibit 84), the Contractor requested that the structural beam design for the west shaft be issued as soon as possible. The revisions in the shaft made by the Architect had made this necessary, and the problem was urgent. The Contractor's request was repeated at the meeting on June 24 (see minutes, Exhibit 131), and the Architect said a sketch would be issued that week. The contractor's request was again repeated at the meeting on July 1, 1970 (see minutes, Exhibit 132), and the Architect replied that it had been delayed but would be issued that week. The same exchange occurred at the meeting of July 8, 1970 (see minutes, Exhibit 133). At the meeting on July 15, 1970, the Architect reported that all required sketches except one had been issued (see minutes, Exhibit 134).

118. At the meeting on July 29, 1970 (see minutes, Exhibit 135), the Contractor requested the final drawing, stating that the proposal for the change could not be completed without it. At the meeting on August 5 (see minutes, Exhibit 136), it was reported that the last drawing (SKH-136) had been issued, and the Contractor was asked for a rough estimate of cost. At the meeting on August 12, 1970 (see minutes, Exhibit 137), the Architect directed the Contractor to proceed with the west duct shaft as revised by the sketches mentioned above.

119. The west shaft delay affects the same item as the east shaft work, event 1372 (see paragraph 73, above). Assuming 7 days for start up and 210 days for performance of the work after notice to proceed on August 12, 1970, the revised date for the occurrence of event 1372 would be March 25, 1971, or 569 days later than the original schedule. The delay is concurrent with the X-ray facilities delay (paragraph 78, Section VIII), but 16 days longer. Accordingly, the total time extension due on the east wing for delays so far discussed is 569 calendar days. We are also entitled to reimbursement for extra costs resulting from this delay.

XII. DELAY ON CONDUCTIVE FLOORING

120. The original contract plans and specifications called for installation of conductive flooring in a number of rooms. In the contract price negotiations (see paragraphs 2 to 4, above) one of the modifications agreed to was to change the conductive terrazzo floors and conductive neoprene cove base to conductive sheet vinyl tile and butt type cove base as manufactured by Robbins.

121. Since a sole source for the material was specified, we proceeded to award the flooring contract to Mari & Sons Flooring Company with the same proviso. Mari in turn placed an order with Robbins for the material, and this was submitted to and approved by the Architect in letter of January 6, 1970.

122. By letter of April 10, 1970, Mari informed us that the Robbins Company had gone into receivership and, in review of the guarantee problem, requested information as to whether a different source should be sought. We promptly requested that they get information on other sources and, by letter of April 16, 1970 (Exhibit 138), reported the matter to the Architect, suggesting two other sources.

123. By letter of April 27, 1970 (Exhibit 139), the Architect proposed, instead of one of our suggestions, the firm of Dynamit Nobel Sales Corp. Both we and Mari attempted to obtain a quotation from this firm, but they were apparently not interested and did not reply. By letter of May 13, 1970 (Exhibit 140), we reported our failure to get a quotation from the Architect's suggested source and requested further advice.

124. At the job meeting on May 20, 1970 (see Exhibit 128), the Contractor requested the Architect to furnish a new source for conductive flooring materials. This request was repeated at meetings of May 27 (Exhibit 129) and June 3 (Exhibit 83). At the meeting of June 10 (Exhibit 130), the Architect requested the Contractor to review the possibility of using a Dex-O-Tex floor system. We promptly contacted the Dex-O-Tex supplier, New England Deck & Floor Company, but this firm declined to

make a take off for firm pricing unless assured of an order. However, based on information obtained from them, we furnished the Architect by telephone on June 23, 1970, approximate estimates of the cost of Dex-O-Tex.

125. At the job meeting on June 24, 1970 (Exhibit 131), the Architect requested us to submit proposals on both Dex-O-Tex and Neotex. In the meantime, based on an informal request from the Architect, we had submitted a proposal based on use of Terraprene, but this was rejected by the Architect.

126. On July 14, 1970, we received a request from the Architect to furnish samples of VPI and Burke conductive vinylite. We obtained these samples and furnished them on July 31. On September 24, at the Architect's request, we submitted a new proposal on Terraprene based on a revised scope. On September 28, at the Architect's request, we submitted a sample of Burke Conductile Conductive rubber tile.

127. By letter of October 21, 1970 (Exhibit 141), the Architect rejected our revised proposal on Terraprene and requested a revised proposal on Monoprene or Neotex in certain areas with tile in other areas. We submitted this proposal on October 28. At the job meeting on November 4, 1970 (see minutes, Exhibit 142), the Architect approved this proposal. Formal approval, however, was not given until March 4, 1971.

128. Assuming that the informal approval of November 4 permitted us to proceed, and allowing 120 days for letting a contract to the new supplier, getting approval of materials, and delivery of materials to

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site, the starting date for installation of flooring would be March 4, 1971. This would be event 956 on our original schedule, which had an early start date of May 1, 1969. The total delay from May 1, 1969, to March 4, 1971, is 665 days which is the number of calendar days of time extension to which we are entitled on the east wing for delays so far discussed. Previous delays on the east wing are concurrent with this delay. To the extent that this delay was aggravated by the Architect's indecision, we are entitled to reimbursement for extra costs that resulted.

XIII. FIFTH LEVEL X-RAY FACILITIES DELAY

129. In Section VIII of the claim, there has been discussed the delay to the fourth level X-ray facilities. A somewhat similar delay occurred to the X-ray facilities on the fifth level. The cause of the delay was the same, the lack of information on the Owner-furnished equipment, which in turn delayed the layout and installation of utility runs and the completion of partition work.

130. At the job meeting of September 23, 1970 (Exhibit 106), the Contractor was authorized to proceed with the changes to the fifth level X-ray facilities. Event 888 on the original schedule is the event held up by this change. This event was scheduled to occur on March 24, 1969. With notice to proceed on September 23, 1970, and allowing 90 days to perform the additional work in the change, the revised date for the occurrence of event 888 would be December 22, 1970, or a delay of 638 calendar days. This is less than the 665 days due to the delay on conductive flooring and is concurrent therewith. Hence no further time extension on the east wing beyond 665 days is due for delays discussed through Section XIII.

XIV. HOLLOW METAL DOOR DELAY

131. A very serious delay to the west wing involved the hollow metal door frames for that wing. The shop drawings for these frames had been submitted to the Architect under dates of December 16, 1968, and April 18, 1969. Based on the Architect's comments, and including numerous clarifications, revised shop drawings were prepared. Meanwhile, due to previous delays, the delivery of the frames had been rescheduled to the summer of 1970. The revised drawings were prepared by the supplier under date of January 8, 1970, checked by the Contractor, and submitted to the Architect on January 26, 1970.

132. Under date of March 2, 1970, the Architect returned the shop drawings with "Holds" indicated on 140 doors. The holds continued in effect until July 10, 1970, at which time the Architect issued sketches SKA-91 and SKA-92, showing revised data and releasing the holds. Meanwhile, and continuing through November 1970, the Architect had revised dimensions on about 20 other frames.

133. On July 10, 1970, when the release was received on the 140 door frames, the supplier, Atlantic Metal, was on vacation. On July 20, the supplier was closed by a strike which did not end until August 30, 1970. By that time a considerable backlog had developed in Atlantic's shop which increased fabrication time .

134. The door frames are not standard and require special fabrication. Because of the numerous changes and the backlog caused by the strike the fabrication time for these doors will total about 25 weeks.

135. The Contractor has attempted to mitigate the delay by working out of sequence, and by installing doors that were not changed and were delivered early. However, this has resulted in increased costs which are a part of our claim.

136. The foregoing delay controls the occurrence of event 1754, which was originally scheduled to occur on February 26, 1969. With a 25-week delay after August 30, 1970, the revised scheduled date for event 1754 would be February 21, 1970. This represents a total delay of 725 calendar days, which is the amount of time extension due on the west wing. Other delays previously described are concurrent. We claim reimbursement for extra costs resulting from this delay.

XV. LAUNDRY FACILITIES DELAY

137. The contract calls for construction of new laundry facilities in the east wing and moving of the old laundry into the new area as soon as the latter is completed. At some point in the course of the job, the Owner or Architect discovered that the water supply to the new laundry area was inadequate and that it would be necessary to defer the move until the water system was redesigned.

138. In the job meeting on February 10, 1971 (see minutes, Exhibit 143), it was stated that the redesign study would be completed in about two weeks.

139. The move of the laundry was originally scheduled to start September 29, 1969. Assuming that we receive notice to proceed by May 1, 1971, on the redesign and that 60 days will be required to perform the required work, the revised start date would be July 1, 1971. This represents a delay of 640 calendar days. This is less than the 665 days

due to the delay on the conductive flooring and is concurrent therewith. Hence no further time extension on the east wing beyond 665 days is due for delays discussed through Section XV.

XVI. DELAY DUE TO LIMITED ACCESS TO EAST WING

140. At meetings with the Owner and the hospital on February 8 and 16, 1971, the Contractor presented detailed schedules showing how it was planned to perform the remainder of the work in the east wing of the hospital. These detailed schedules were consistent with the contractor's original schedule for the east wing (Exhibit 13).

141. Unfortunately, however, at the February 16 meeting the Owner imposed certain restrictions on the Contractor's work on the fourth and fifth floors of the east wing, which has made it impossible for the Contractor to perform his work on these floors as originally scheduled. As a result it is necessary to defer completion of work on these floors until a point about six months later than it would have occurred under the original schedule as revised.

142. This delay will not, however, delay the overall completion of the contract, since the work can still be performed concurrently with the alteration work scheduled in the final stages of the job. Nevertheless, it will increase the cost of performance of the work on the fourth and fifth levels of the east wing, because such work now has to be performed in a period of higher wage levels. The extra cost which has resulted from the restrictions imposed by the Owner is included in our claim. These restrictions were not anticipated by the Contractor and were not set forth in the contract specifications.

XVII. DELAYS IN APPROVAL ACTIONS

143. Serious delays occurred to the Contractor's work on this job due to the inordinate time frequently taken by the Owner and/or Architect in action on approvals of submissions by the Contractor and his subcontractors, or in answering questions as to clarifications, errors in the drawings, etc. This section of the claim briefly describes these delays.

144. By letter of November 13, 1968 (Exhibit 144), we notified the Architect that his delay in approval of subcontractors was delaying us in placing firm orders and submitting shop drawings. By letter of November 14, 1968 (Exhibit 145), we notified the Architect of his delay in action on certain shop drawings.

145. By letter of January 7, 1969 (Exhibit 146), we requested early return of stair drawings. By letter of January 15, 1969 (Exhibit 147), we stated that delay in processing shop drawings was seriously delaying the work.

146. At this point, we felt that we had to develop a routine method of notifying the Architect of delays in returning submissions. Accordingly, we prepared a form letter (see examples, Exhibits 148, 149 and 150), which we thereafter continued to use.

147. The problem continued, however, and on May 9, 1969, we sent a long letter to the Architect listing some of the items delaying our work (Exhibit 151). Similar letters were sent on May 16 and 23, 1969 (Exhibits 152 and 153). In our letter of June 30, 1969 (Exhibit 71), we summarized the delay problem and requested a meeting with the Owner to give him first hand knowledge of our views.

148. By letter of September 24, 1969 (Exhibit 154), we again reminded the Architect of the seriousness of the problem which, as we stated, we had been unable to resolve in frequent telephone calls.

149. In letter of January 20, 1970 (Exhibit 75), we listed a large number of field questions for which we had been awaiting answers for up to seven months. In letter of February 3, 1970 (Exhibit 155), the Architect stated that he believed all the questions had been answered. In letter of February 9, 1970 (Exhibit 156), the Architect alleged that lack of coordination drawings caused the field questions to arise. In our reply of February 12, 1970 (Exhibit 157), we reminded the Architect that answers to the questions were needed in order to prepare the coordination drawings, and we again requested a meeting on the problem.

150. A meeting was held thereafter, as requested, and improvement in obtaining answers was effected. However, the problem did continue to hamper us to some degree. For example, by letter of February 17, 1971 (Exhibit 58), we listed various items still awaiting action by the Architect. Our letter of February 24, 1971 (Exhibit 158), is cited as a further example.

151. The foregoing recitation of delays on approval actions is intended to demonstrate the magnitude of the problem and does not constitute a further request for time extension. Most of these delays were concurrent with other delays. Those that became critical (for example, the door frames) have been considered separately in the other sections of this report. To the extent that increased costs resulted from the delays, such costs are covered in Section XX of this claim.

XVIII. CHANGE ORDER DELAYS

152. In addition to the major delays hereinbefore described, completion of the contract has been delayed by the numerous change orders issued by the Architect under Article 43 of the General Conditions of the contract. In this section of the claim, determination is made as to the total amount of time due for all changes made under the contract.

153. During the initial stages of the contract, the Contractor placed time extension reservations on proposals for changes as submitted to the Architect. These reservations read as follows:

> "No attempt has been made to evaluate the effect of this proposed change order on the schedule at this time. In the event it is subsequently determined that the work has been delayed by this proposed change order, considered separately or in conjunction with other delaying factors, right to an equitable price adjustment and time extension is reserved."

154. The Architect objected strenuously to these reservations. See our letter of March 24, 1969 (Exhibit 159), Architect's reply of April 22, 1969 (Exhibit 160), and our reply of April 24, 1969 (Exhibit 161). We were subsequently informed by the Architect that no change order would be processed with such a reservation, which meant that we would not be paid for the work, but that if we omitted the reservation this would not prejudice our right to claim a time extension at a later date. As a result, we were literally forced to discontinue placing the reservation on the proposals, with the informal understanding that our rights to time extension were not thereby jeopardized. In our letter of July 15, 1969 (Exhibit 72), paragraph 1a, we confirmed the fact that all of our change order proposals contained a reserva-

155. The reasons for the reservation are that it is extremely difficult to make time determinations in advance and that disputes over the time due often delay processing changes and delay payments for work done. We are now, however, in a position to determine the amount of time due for the changes, having completed a detailed study as to their effects on the job.

156. The attached tabulation (Exhibit 162), entitled "Change Order Time Study, Mt. Sinai," shows the time due on each activity affected by the changes. The total amount due for all changes is shown to be 666 activity-days.

157. Experience has shown that approximately 40 percent of the activities on a large construction job are on the critical path. Using this as a guide, we are entitled to an overall time extension of 266 calendar days for all changes which were issued. This should be applied to both wings of the hospital since it is impracticable to separate the effects by wings of the structure.

158. It is appropriate at this point to describe several other major difficulties to which we were subjected due to the manner in which the changes were handled by the Architect and Owner. The normal procedure for issuing changes is to publish revised drawings and specifications, which can then be substituted for the original contract sheets. This is the customary practice in the industry, with which the Contractor is familiar.

159. In lieu of issuing revised drawings and specifications in the normal manner, the Architect has instead published separate sketches which have to be used in conjunction with the original drawings. These come in odd sizes which are difficult to handle with the regular size drawings. In some cases, the changes were simply described in bulletins and no sketches were issued. The effect of this procedure is very confusing. We

have to construct a building from piecemeal drawings and bulletins, including drawings which have been superseded in parts by drawings separately published at irregular intervals.

160. At a fairly early stage of the work, the number of changes issued in this manner had become so great that, fearing the strong likelihood of costly errors, we requested the Architect to issue changes in the normal manner. See our letter of June 16, 1969 (Exhibit 163).

161. The Architect did not comply with our request. Throughout the job we had to contend with this confusing situation. In order to assure ourselves that we would avoid expensive and time-consuming errors, we were forced to add to our supervision and administrative staff so as to handle the revisions properly. If the changes had been issued to us in the customary manner, much of this extra work could have been avoided.

162. The Owner also added to our administrative burden in handling changes. All of our price proposals had to be reviewed by a special committee of the hospital after they had been reviewed by the Architect and his engineers. The hospital representatives in turn forced us into lengthy negotiations over essentially trivial matters. As a result we expended much more in change order administration than we were able to recover in the mark-up we were allowed on the changes.

163. At one stage during change order price negotiations, the Owner took the position that we could be directed to proceed with a change on a time-and-material basis but with costs not to exceed an amount fixed by him. The right to give such an order is not contained in the contract, as we pointed out in our letter of March 3, 1970 (Exhibit 164). This attitude delayed change

his position.

164. Even after agreement with the Owner and Architect had been obtained on the price of a change, there was usually a very lengthy period before we could receive payment on a change, since all change orders had to be processed through Connecticut State authorities. At the time we agreed to the assignment of the contract to the State of Connecticut Health and Education Facilities Authority, we stated as a condition of our agreement that Kidde would be reimbursed for any additional costs to itself or its subcontractors caused by the assignment (Exhibit 11).

165. To the extent that the above conditions have increased our costs under the contract, such costs are included in our claim.

XIX. SUMMARY OF DELAYS

166. Adding the 266 days found due in the preceding section to the 736 days previously found due on the west wing (Section X), we find that a total time extension of 1002 calendar days is due on the west wing for all excusable delays and changes. Adding 266 days to the 665 days previously found due on the east wing (Section XII), we find that a total time extension of 931 days is due on the east wing for all excusable delays and changes.

167. The completion of the east wing is dependent on prior completion of the west wing. Our original schedule (Exhibit 13) shows that completion of the west wing (event 3400) was to occur on April 25, 1970, and was to precede completion of the east wing by 91 days. The time extension for the east wing must therefore be at least as long as that for the west wing, so as to allow time for completing those items of work in the east wing which must follow completion of the west wing. Accordingly, the time extension due on the east wing is also 1002 calendar days.

168

168. We therefore request that the scheduled time for completion of the work be extended as follows:

East Wing, 1002 days (from July 25, 1970 to April 22, 1973)

West Wing, 1002 days (from April 25, 1970 to December 22, 1972)

169. We further request that the time in which liquidated damages may not be assessed (see paragraph 12, above), be extended by 1002 days to a total of 2,102 days, and that the time for completing all work be extended to a total of 2,302 days.

XX ESTIMATE OF COST

170. As explained above, we are entitled to a contract price adjustment for the extra costs resulting from the delays for which the Owner is responsible. We have previously made partial estimates of such costs. We have now revised our estimate, which is set forth in detailed form in Exhibit 165.

XXI. DEMAND FOR PAYMENT

171. For the reasons set forth herein, we demand payment of the sum of $3,573,425, as shown in Exhibit 165, subject to adjustment for subcontract and interest costs as stated therein. If a settlement of this demand is not made within 60 days, we shall begin arbitration action in accordance with the terms of the contract.

WALTER KIDDE CONSTRUCTORS,
Incorporated

Encls. Exhibits 1 through 165
cc: Mt. Sinai Hospital
State of Connecticut

DISTRIBUTION:
2 3

Exhibit I
Proposed Change Z-12

PROPOSED CHANGE Z-12 FOLIO 1588-211

DATE 2/24/72

OWNER MOUNT SINAI HOSPITAL

LOCATION OF PROJECT HARTFORD, CONNECTICUT

CHANGE INITIATED BY

SCOPE AND DESCRIPTION:

Estimate of additional costs of alteration work due to change in phasing schedule condition.

"All Man-Hours, upon which all charges are computed, as contained in this estimate, represent the differential in anticipated actual construction time necessary to perform the specific function under inefficient conditions caused by Owner's concurrent occupancy in the alteration area as compared to the anticipated time to perform the same operation under original contract conditions (i.e. without interference due to Owner's concurrent occupancy)."

ACCEPTED:

DATE

BY

TITLE:

NET COST ..... $ -----

FEE ..... $ -----

TOTAL ADD $ 335,500.

Walter KIDDE CONSTRUCTORS Incorporated
19 Rector St, New York, N. Y. 10006 - DI 4-4430
Engineers • Builders

Form 101-5M 7-70 J.McG. Co. 170

ESTIMATE DETAIL

Walter KIDDE CONSTRUCTORS Incorporated
19 Rector St., New York, N. Y. 10006 - 425-3030
Engineers • Builders

Ext. by.....

Checked by.....

NAME MOUNT SINAI HOSPITAL FOLIO 1588-211

LOCATION HARTFORD, CONNECTICUT DATE 2/24/72

PAGE S-1

P.C.O. - "Z-12"

CLASS OF WORK	QUANTITY	LABOR UNIT	LABOR COST	MAT. UNIT	MATERIAL COST
SUMMARY:	Arch.-Struct. Trades (From pg. 2		Mech.-Elect. Trades From pg. 3		Totals
Third Floor East	17,636		4,744		22,380
Third Floor West	46,894		5,726		52,620
Fifth Floor (Area 5-1)	43,270		5,750		49,020
Fifth Floor (Area 5-2)	19,951		5,626		25 577
Fifth Floor (Area 5-3)	63,689		10,517		74,206
Fifth Floor (Area 5-4)	23,357		4,644		28,001
Fifth Floor (Area 5-5)	15,670		378		16,048
	230,467		37,385		267,852
Additional General Condition Costs not included in Change Order markup.					24,000
(See Page 1)					291,852
Change Order Mark Up 15%					43,648
				Total Add	$335,500

TOTAL

(171)

Exhibit J
Demand for Arbitration by Kidde against Owner

CONSTRUCTION INDUSTRY ARBITRATION RULES

DEMAND FOR ARBITRATION

DATE: March 24, 1972

TO: (Name) THE MOUNT SINAI HOSPITAL and STATE OF CONNECTICUT HEALTH AND EDUCATION FACILITIES AUTHORITY (Assignee)
(of party upon whom the Demand is made)

(Address) Addresses are given on attached additional sheet.

(City and State) _____

Named claimant, a party to an arbitration agreement contained in a written contract,

dated October 29, 1968, providing for arbitration, under the Construction Industry Arbitration Rules, hereby demands arbitration thereunder.

NATURE OF DISPUTE: Claimant alleges the wro[illegible]ful denial by The Mount Sina Hospital and the State of Connecticut Health and Education Facilities Auther as the Hospital's assignee (both parties hereinafter collectively referred t as Owner), acting through its architect as agent, of Claimant's change order Z-12, submitted to the architect on February 24, 1972, for extra compensatio which reflects the increased cost of performing the work as the result of th

(continued on attached additional sheet)

CLAIM OR RELIEF SOUGHT: (amount, if any) $335,500.00, representing increased costs of alteration work due to Owner's change in phasing schedule.

HEARING LOCALE REQUESTED: New York, New York
(City and State)

You are hereby notified that copies of our Arbitration Agreement and of this Demand are being filed with the American Arbitration Association at its New York, New York Regional Office, with the request that it commence the administration of the arbitration. Under Section 7 of the Arbitration Rules, you may file an answering statement within seven days after notice from the Administrator.

[illegible]ID & PRIEST
Attorneys for Claimant
40 Wall Street
New York, New York 10005
Tel.: (212) 344-2233

Signed Walter J. Connolly
(May be signed by Attorney)

Name of Claimant WALTER J. CONNOLLY, SENIOR VICE PRESIDENT, WALTER KIDDE CONSTRUCTORS, INCORPORATED

Address (to be used in connection with this case) 19 Rector Street

Demand for Arbitration (continued)

Addresses of parties upon whom the Demand is made:

THE MOUNT SINAI HOSPITAL
500 Blue Hills Avenue
Hartford, Connecticut 06112

STATE OF CONNECTICUT HEALTH AND
EDUCATION FACILITIES AUTHORITY
60 Washington Street
Hartford, Connecticut

NATURE OF DISPUTE (continued):

Owner's modification of the phasing schedule specified in the contract. Claimant reserves all and every right it may have to assert and submit to arbitration any and all other claims arising out of or relating to performance of the contract herein.

ITRATION AGREEMENT

The arbitration agreement pursuant to which this Demand for Arbitration is made is contained in Articles 6 and 7 of the General Conditions, as amended by the Supplementary General Conditions and the Agreement, of the written contract dated October 29, 1968, and is as follows:

"6. Architect's Decisions - (a) It shall be the responsibility of the Architect to make written decisions in regard to all claims of the Owner or Contractor and to interpret the Contract documents on all matters arising in connection with the execution of the work.

(b) Except as otherwise specified, all the Architect's decisions or interpretations of contract requirements are subject to arbitration.

(c) If the Architect fails to make a written decision or written interpretation of the contract requirements on any question within ten days after written request for same by either party to the contract, either party may then demand arbitration, in which event later decision by the Architect shall not stop the arbitration proceedings except with the mutual consent of both parties to the contract.

"7. Arbitration - (a) Matters subject to arbitration shall be decided in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, unless the parties mutually agree otherwise. This agreement so to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

(b) The work under this contract shall not be stopped or delayed in any way during the arbitration proceedings except by written mutual consent of both parties to the contract, and such mutual consent shall stipulate whether extension of the time for completion of the contract will be authorized by such stoppage or delay.

(c) Demand for arbitration in connection with any dispute shall be filed in writing with the Architect and with the other party to the contract. Any demand for arbitration shall be made within thirty days after the dispute has arisen if practicable, but, in any event, no demand for arbitration shall be made after the date of final payment except in the case of a dispute arising in connection with any guarantee provisions of the Contract Documents. Notice of the demand for arbitration shall also be filed in writing with the American Arbitration Association.

(d) The arbitrators hereunder shall have authority to award to the party whose contentions are approved as being in conformity with contract requirements such sums as they, or a majority of them, consider is proper to compensate the injured party for any loss in connection with the proceedings; and, if they find that the arbitration proceedings were demanded without reasonable cause, they may in addition award the injured party damages for delay, unless precluded by agreement between the contracting parties before arbitration. The arbitrators shall set their own compensation and determine the total amount of such compensation and other costs and expenses of the proceedings incurred by them, unless agreed prior to the proceedings, and shall assess the total of the costs of the proceedings upon either or both parties to the contract in such proportions as they, or a majority of them, may approve."

Exhibit K:
Amended Demand for Arbitration by Kidde against Owner

CONSTRUCTION INDUSTRY ARBITRATION RULES

AMENDED DEMAND FOR ARBITRATION

Date: June 28, 1972

TO: (Name) THE MOUNT SINAI HOSPITAL AND STATE OF CONNECTICUT HEALTH AND EDUCATION FACILITIES AUTHORITY (Assignee)

(of party upon whom the Demand is made)

(Address) Addresses are given on attached additional sheet.

(City and State) _____

Named claimant, a party to an arbitration agreement contained in a written contract, dated October 29,1968, providing for arbitration, under the Construction Industry Arbitration Rules, hereby demands arbitration thereunder.

NATURE OF DISPUTE: Claimant's Demand for Arbitration dated March 24, 1972 is hereby amended to join therin all claims which Claimant has against Respondent arising out of the contract between the parties' dated October 29, 1968, and the job known as "The Mount Sinai Hospital Hartford, Connecticut - Stage I Additions and Alterations", including

(continued on attached additional sheet)

CLAIM OR RELIEF SOUGHT: (amount, if any)

Damages sustained to date, in excess of $6,000,000.00, and any and all other damages that hereafter may be sustained by Claimant arising out of the contract dated October 29, 1968.

PLEASE TAKE FURTHER NOTICE, that unless within ten days after service of this Notice of Intention to Arbitrate, you apply to stay the arbitration herein, you shall thereafter be precluded from objecting that a valid agreement was not made or has not been complied with and from asserting in court the bar of a limitation of time.

HEARING LOCALE REQUESTED: New York, New York
(City and State)

You are hereby notified that copies of our Arbitration Agreement and of this Demand are being filed with the American Arbitration

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To institute proceedings, please send three copies of this Demand and the arbitration agreement, with the filing fee, as provided in Section 47 of the Rules.

Association at its New York, New York Regional Office with the request that it commence the administration of the arbitration. Under Section 7 of the Arbitration Rules, you may file an answering statement within seven days after notice from the Administrator.

REID & PRIEST
Attorneys for Claimant
40 Wall Street
New York, N.Y. 10005
Tel.: (212) 344-2233

Signed _____
(May be Signed by Attorney)

WALTER J. CONNOLLY, SENIOR VICE PRESIDENT

Name of Claimant WALTER KIDDE CONSTRUCTORS INCORPORATED

Address
(to be used in connection with this case) 19 Rector Street

City and State New York, New York 10006

Telephone (212) 425-3030

Amended Demand for Arbitration (continued)

Addresses of parties upon whom the Amended Demand is made:

THE MOUNT SINAI HOSPITAL
500 Blue Hills Avenue
Hartford, Connecticut 06112

STATE OF CONNECTICUT HEALTH AND EDUCATION FACILITIES AUTHORITY
60 Washington Street
Hartford, Connecticut

NATURE OF DISPUTE (continued)

the claims recited in Claimant's written claim, submitted to the Respondent and its Architect on July 14, 1971, setting forth the Claim of Contractor for Time Extension for Excusable Delays and Contract Price Adjustment for Extra Costs Due to Delays for Which Owner is Responsible, concerning which written claim there has been no written decision or written interpretation of the contract requirements by the Architect within ten (10) days after written request therefor by Claimant.

ARBITRATION AGREEMENT

The arbitration agreement pursuant to which this Demand for Arbitration is made is contained in Articles 6 and 7 of the General Conditions, as amended by the Supplementary General Conditions and the Agreement, of the written contract dated October 29, 1968, and is as follows:

"6. Architect's Decisions - (a) It shall be the responsibility of the Architect to make written decisions in regard to all claims of the Owner or Contractor and to interpret the Contract documents on all matters arising in connection with the execution of the work.

(b) Except as otherwise specified, all the Architect's decisions or interpretations of contract requirements are subject to arbitration.

(c) If the Architect fails to make a written decision or written interpretation of the contract requirements on any question within ten days after written request for same by either party to the contract, either party may then demand arbitration, in which event later decision by the Architect shall not stop the arbitration proceedings except with the mutual consent of both parties to the contract.

"7. Arbitration - (a) Matters subject to arbitration shall be decided in accordance with the Construction Industry Arbi-ration Rules of the American Arbitration Association then obtaining, unless the parties mutually agree otherwise. This agreement so to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

(b) The work under this contract shall not be stopped or delayed in any way during the arbitration proceedings except by written mutual consent of both parties to the contract, and such mutual consent shall stipulate whether extension of the time for completion of the contract will be authorized by such stoppage or delay.

ARBITRATION AGREEMENT (continued)

(c) Demand for arbitration in connection with any dispute shall be filed in writing with the Architect and with the other party to the contract. Any demand for arbitration shall be made within thirty days after the dispute has arisen if practicable, but, in any event, no demand for arbitration shall be made after the date of final payment except in the case of a dispute arising in connection with any guarantee provisions of the Contract Documents. Notice of the demand for arbitration shall also be filed in writing with the American Arbitration Association.

(d) The arbitrators hereunder shall have authority to award to the party whose contentions are approved as being in conformity with contract requirements such sums as they, or a majority of them, consider is proper to compensate the injured party for any loss in connection with the proceedings; and, if they find that the arbitration proceedings were demanded without reasonable cause, they may in addition award the injured party damages for delay, unless precluded by agreement between the contracting parties before arbitration. The arbitrators shall set their own compensation and determine the total amount of such compensation and other costs and expenses of the proceedings incurred by them, unless agreed prior to the proceedings, and shall assess the total of the costs of the proceedings upon either or both parties to the contract in such proportions as they, or a majority of them, may approve."

Exhibit L: Demand for Arbitration by Owner against Perkins & Will

CONSTRUCTION INDUSTRY ARBITRATION RULES

DEMAND FOR ARBITRATION

Date: April 20, 1973

TO: (Name) E. TODD WHEELER and THE PERKINS and WILL PARTNERSHIP
(of party upon whom the Demand is made)

(Address) 445 Hamilton Avenue

(City and State) White Plains, New York 10601

Named claimant, a party to an arbitration agreement contained in a written contract, dated July 28, 1965, providing for arbitration, under the Construction Industry Arbitration Rules, hereby demands arbitration thereunder.

NATURE OF DISPUTE:

The arbitration instituted by Walter Kidde Constructors, Inc., against The Mount Sinai Hospital and State of Connecticut Health and Education Facilities Authority, a copy of which is attached hereto.

CLAIM OR RELIEF SOUGHT: (amount, if any)

So much of damages claimed by Walter Kidde Constructors, Inc., which were the fault of the Architects and their Engineers

PLEASE TAKE FURTHER NOTICE, that unless within ten days after service of this Notice of Intention to Arbitrate, you apply to stay the arbitration herein, you shall thereafter be precluded from objecting that a valid agreement was not made or has not been complied with and from asserting in court the bar of a limitation of time.

HEARING LOCALE REQUESTED: New York, New York
(City and State)

You are hereby notified that copies of our Arbitration Agreement and of this Demand are being filed with the American Arbitration

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To institute proceedings, please send three copies of this Demand and the arbitration agreement, with the filing fee, as provided in Section 47 of the Rules.

Association at its New York, New York Regional Office with the request that it commence the administration of the arbitration. Under Section 7 of the Arbitration Rules, you may file an answering statement within seven days after notice from the Administrator.

MAX E. GREENBERG, TRAYMAN, HARRIS,
CANTOR, REISS & BLASKY
Attorneys for Claimant
100 Church Street
New York, New York 10007
(212) 267-5700

Signed _____
(May be Signed by Attorney)

Name of Claimant: THE MOUNT SINAI HOSPITAL OF HARTFORD, CONNECTICUT and STATE OF CONNECTICUT HEALTH AND EDUCATION FACILITIES AUTHORITY
(Assignee)

Address (to be used in connection this case): 500 Blue Hills Avenue

City and State: Hartford, Connecticut 06112

Telephone: (203) 243-1441

ARBITRATION AGREEMENT:

The arbitration agreement pursuant to which this Demand for Arbitration is made is contained in Paragraph "D" of the written Agreement, dated July 28, 1965, between the parties, which provides as follows:

"D. Arbitration

Arbitration of all questions in dispute under this Agreement shall be at the choice of either party and shall be in accordance with the provisions, then obtaining, of the Standard Form of Arbitration Procedure of The American Institute of Architects. This Agreement shall be specifically enforceable under the prevailing arbitration law and judgment upon the award rendered may be entered in the court of the forum, state or federal, having jurisdiction. The decision of the arbitrators shall be a condition precedent to the right of any legal action".

American Arbitration Association 182

CONSTRUCTION INDUSTRY ARBITRATION RULES

DEMAND FOR ARBITRATION

DATE: March 24, 1972

TO: (Name) THE MOUNT SINAI HOSPITAL and STATE OF CONNECTICUT HEALTH AND EDUCATION FACILITIES AUTHORITY (Assignee)
(of party upon whom the Demand is made)

(Address) Addresses are given on attached additional sheet.

(City and State) _____

The claimant, a party to an arbitration agreement contained in a written contract, dated October 29, 1968, providing for arbitration, under the Construction Industry Arbitration Rules, hereby demands arbitration thereunder.

NATURE OF DISPUTE: Claimant alleges the wrongful denial by The Mount Sinai Hospital and the State of Connecticut Health and Education Facilities Authority as the Hospital's assignee (both parties hereinafter collectively referred to as Owner), acting through its architect as agent, of Claimant's change order Z-12, submitted to the architect on February 24, 1972, for extra compensation which reflects the increased cost of performing the work as the result of

(continued on attached additional sheet)

CLAIM OR RELIEF SOUGHT: (amount, if any) $335,500.00, representing increased costs of alteration work due to Owner's change in phasing schedule.

HEARING LOCALE REQUESTED: New York, New York
(City and State)

You are hereby notified that copies of our Arbitration Agreement and of this Demand are being filed with the American Arbitration Association at its New York, New York Regional Office, with the request that it commence the administration of the arbitration. Under Section 7 of the Arbitration Rules, you may file an answering statement within seven days after notice from the Administrator.

REID & PRIEST
Attorneys for Claimant
40 Wall Street
New York, New York 10005
Tel.: (212) 344-2233

Signed Walter J. Connolly
(May be Signed by Attorney)

Name of Claimant WALTER J. CONNOLLY, SENIOR VICE PRESI
WALTER KIDDE CONSTRUCTORS, INCORPORAT

Address (to be used in connection with this case) 19 Rector Street

City and State New York, New York 10006

Telephone (212) 425-3030

To institute proceedings, please send three copies of this Demand and the arbitration agreement, with the filing fee, as provided in Section 47 of the Rules.

Demand for Arbitration (continued)

Addresses of parties upon whom the Demand is made:

THE MOUNT SINAI HOSPITAL
500 Blue Hills Avenue
Hartford, Connecticut 06112

STATE OF CONNECTICUT HEALTH AND
EDUCATION FACILITIES AUTHORITY
60 Washington Street
Hartford, Connecticut

NATURE OF DISPUTE (continued):

Owner's modification of the phasing schedule specified in the contract. Claimant reserves all and every right it may have to assert and submit to arbitration any and all other claims arising out of or relating to performance of the contract herein.

ARBITRATION AGREEMENT

The arbitration agreement pursuant to which this Demand for Arbitration is made is contained in Articles 6 and 7 of the General Conditions, as amended by the Supplementary General Conditions and the Agreement, of the written contract dated October 29, 1968, and is as follows:

"6. Architect's Decisions - (a) It shall be the responsibility of the Architect to make written decisions in regard to all claims of the Owner or Contractor and to interpret the Contract documents on all matters arising in connection with the execution of the work.

(b) Except as otherwise specified, all the Architect's decisions or interpretations of contract requirements are subject to arbitration.

(c) If the Architect fails to make a written decision or written interpretation of the contract requirements on any question within ten days after written request for same by either party to the contract, either party may then demand arbitration, in which event later decision by the Architect shall not stop the arbitration proceedings except with the mutual consent of both parties to the contract.

"7. Arbitration - (a) Matters subject to arbitration shall be decided in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, unless the parties mutually agree otherwise. This agreement so to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

(b) The work under this contract shall not be stopped or delayed in any way during the arbitration proceedings except by written mutual consent of both parties to the contract, and such mutual consent shall stipulate whether extension of the time for completion of the contract will be authorized by such stoppage or delay.

ARBITRATION AGREEMENT (continued)

(c) Demand for arbitration in connection with any dispute shall be filed in writing with the Architect and with the other party to the contract. Any demand for arbitration shall be made within thirty days after the dispute has arisen if practicable, but, in any event, no demand for arbitration shall be made after the date of final payment except in the case of a dispute arising in connection with any guarantee provisions of the Contract Documents. Notice of the demand for arbitration shall also be filed in writing with the American Arbitration Association.

(d) The arbitrators hereunder shall have authority to award to the party whose contentions are approved as being in conformity with contract requirements such sums as they, or a majority of them, consider is proper to compensate the injured party for any loss in connection with the proceedings; nd, if they find that the arbitration proceedings were demanded without reasonable cause, they may in addition award the injured party damages for delay, unless precluded by agreement between the contracting parties before arbitration. The arbitrators shall set their own compensation and determine the total amount of such compensation and other costs and expenses of the proceedings incurred by them, unless agreed prior to the proceedings, and shall assess the total of the costs of the proceedings upon either or both parties to the contract in such proportions as they, or a majority of them, may approve."

CONSTRUCTION INDUSTRY ARBITRATION RULES

AMENDED DEMAND FOR ARBITRATION

Date: June 28, 1972

TO: (Name) THE MOUNT SINAI HOSPITAL AND STATE OF CONNECTICUT HEALTH AND EDUCATION FACILITIES AUTHORITY (Assignee)

(of party upon whom the Demand is made)

(Address) Addresses are given on attached additional sheet.

(City and State) _____

Named claimant, a party to an arbitration agreement contained in a written contract, dated October 29,1968, providing for arbitration.
under the Construction Industry Arbitration Rules, hereby demands arbitration thereunder.

NATURE OF DISPUTE: Claimant's Demand for Arbitration dated March 24, 1972 is hereby amended to join therin all claims which Claimant has against Respondent arising out of the contract between the parties' dated October 29, 1968, and the job known as "The Mount Sinai Hospital Hartford, Connecticut - Stage I Additions and Alterations", including

(continued on attached additional sheet)

CLAIM OR RELIEF SOUGHT: (amount, if any)

Damages sustained to date, in excess of $6,000,000.00, and any and all other damages that hereafter may be sustained by Claimant arising out of the contract dated October 29, 1968.

PLEASE TAKE FURTHER NOTICE, that unless within ten days after service of this Notice of Intention to Arbitrate, you apply to stay the arbitration herein, you shall thereafter be precluded from objecting that a valid agreement was not made or has not been complied with and from asserting in court the bar of a limitation of time.

HEARING LOCALE REQUESTED: New York, New York
(City and State)

You are hereby notified that copies of our Arbitration Agreement and of this Demand are being filed with the American Arbitration

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To institute proceedings, please send three copies of this Demand and the arbitration agreement, with the filing fee, as provided in Section 47 of the Rules.

Association at its New York, New York Regional Office with the request that it commence the administration of the arbitration. Under Section 7 of the Arbitration Rules, you may file an answering statement within seven days after notice from the Administrator.

REID & PRIEST
Attorneys for Claimant
40 Wall Street
New York, N.Y. 10005
Tel.: (212) 344-2233

Signed _____
(May be Signed by Attorney)

WALTER J. CONNOLLY, SENIOR VICE PRESIDENT
Name of Claimant WALTER KIDDE CONSTRUCTORS INCORPORATED

Address
(to be used in connection with this case) 19 Rector Street

City and State New York, New York 10006

Telephone (212) 425-3030

Amended Demand for Arbitration (continued)

Addresses of parties upon whom the Amended Demand is made:

THE MOUNT SINAI HOSPITAL
500 Blue Hills Avenue
Hartford, Connecticut 06112

STATE OF CONNECTICUT HEALTH AND EDUCATION FACILITIES AUTHORITY
60 Washington Street
Hartford, Connecticut

NATURE OF DISPUTE (continued)

the claims recited in Claimant's written claim, submitted to the Respondent and its Architect on July 14, 1971, setting forth the Claim of Contractor for Time Extension for Excusable Delays and Contract Price Adjustment for Extra Costs Due to Delays for Which Owner is Responsible, concerning which written claim there has been no written decision or written interpretation of the contract requirements by the Architect within ten (10) days after written request therefor by Claimant.

ARBITRATION AGREEMENT

The arbitration agreement pursuant to which this Demand for Arbitration is made is contained in Articles 6 and 7 of the General Conditions, as amended by the Supplementary General Conditions and the Agreement, of the written contract dated October 29, 1968, and is as follows:

"6. Architect's Decisions - (a) It shall be the responsibility of the Architect to make written decisions in regard to all claims of the Owner or Contractor and to interpret the Contract documents on all matters arising in connection with the execution of the work.

(b) Except as otherwise specified, all the Architect's decisions or interpretations of contract requirements are subject to arbitration.

(c) If the Architect fails to make a written decision or written interpretation of the contract requirements on any question within ten days after written request for same by either party to the contract, either party may then demand arbitration, in which event later decision by the Architect shall not stop the arbitration proceedings except with the mutual consent of both parties to the contract.

"7. Arbitration - (a) Matters subject to arbitration shall be decided in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, unless the parties mutually agree otherwise. This agreement so to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

(b) The work under this contract shall not be stopped or delayed in any way during the arbitration proceedings except by written mutual consent of both parties to the contract, and such mutual consent shall stipulate whether extension of the time for completion of the contract will be authorized by such stoppage or delay.

ARBITRATION AGREEMENT (continued)

(c) Demand for arbitration in connection with any dispute shall be filed in writing with the Architect and with the other party to the contract. Any demand for arbitration shall be made within thirty days after the dispute has arisen if practicable, but, in any event, no demand for arbitration shall be made after the date of final payment except in the case of a dispute arising in connection with any guarantee provisions of the Contract Documents. Notice of the demand for arbitration shall also be filed in writing with the American Arbitration Association.

(d) The arbitrators hereunder shall have authority to award to the party whose contentions are approved as being in conformity with contract requirements such sums as they, or a majority of them, consider is proper to compensate the injured party for any loss in connection with the proceedings; and, if they find that the arbitration proceedings were demanded without reasonable cause, they may in addition award the injured party damages for delay, unless precluded by agreement between the contracting parties before arbitration. The arbitrators shall set their own compensation and determine the total amount of such compensation and other costs and expenses of the proceedings incurred by them, unless agreed prior to the proceedings, and shall assess the total of the costs of the proceedings upon either or both parties to the contract in such proportions as they, or a majority of them, may approve."

Exhibit M:
1973 Revised Claim by Boise in Kidde's Name

Walter Kidde Constructors Incorporated
345 Park Avenue
New York, N. Y. 10022

July 6, 1973

The Mount Sinai Hospital
500 Blue Hills Avenue
Hartford, Connecticut 06112

E. Todd Wheeler and The Perkins
and Will Partnership
445 Hamilton Avenue
White Plains, New York 10601

Re: The Mount Sinai Hospital, Hartford, Connecticut - Stage I Alterations and Additions
Claim of Contractor for Extra Costs and Time Extension due to Owner Caused Delays

Gentlemen:

Pursuant to Stipulation between The Mount Sinai Hospital ("Owner") and Walter Kidde Constructors Incorporated ("Kidde"), entered into by the parties in the chambers of Honorable Harry B. Frank, Justice of the Supreme Court of the State of New York, on June 7, 1973, Kidde herein submits to the Owner and E. Todd Wheeler and The Perkins and Will Partnership ("Architect") its revised and updated claim under its Contract with the Owner dated October 28, 1968 in respect of the above-referenced project.

The claim, as herein set forth, includes all claims of Kidde against the Owner arising out of the Owner's wrongful non-performance and defective performance of its obligations, express and implied, under the Contract. Kidde is entitled to and demands compensation for extra costs and damages from the Owner in the amount of $9,645,787. Said amount reflects (i) extra costs, including interest, incurred as a direct result of the Owner's failure and refusal to properly perform its contractual obligations, (ii) retention presently withheld by the Owner under the Contract, (iii) amounts in respect of outstanding and disputed change orders,

and (iv) costs and expenses incurred by Kidde in the pursuit of its claim hereunder. As the result of the Owner's wrongful non-performance and defective performance and other interferences with Kidde's work, the time required for performance of Kidde's work under the Contract was extended by 1001 days over the time orginally anticipated by Kidde as reasonably necessary for said work and, with respect thereto, Kidde is entitled to an equivalent extension of any and all completion dates set forth in the Contract documents.

As noted above, the amount claimed by Kidde hereunder includes the retention presently withheld by the Owner in respect of the Contract, which retention has been invoiced by Kidde to the Owner. Upon Kidde's receipt of payment of the retention, the amount of Kidde's claim shall be reduced accordingly.

Kidde hereby reserves its right to demand that any award hereafter made in respect of the claim include interest accrued to the date of award and additional costs and expenses incurred by Kidde in the pursuit of its claim.

The Owner, acting through its officers, employees, contractors, the Architect and others, is responsible for the following acts and omissions in derogation of its express and implied obligations under the Contract:

1. Delay to Temporary Building #2 Caused by Preconstruction Contractor.

The failure of the Owner, as the result of acts of its preconstruction contractor, to make the site of Temporary Building #2 available to Kidde resulted in substantial delay in the excavation and construction of said building.

2. Delay due to Brick Approval.

The Owner, acting through the Architect, (i) failed to approve and select the face brick required for the Project in accordance with the schedule and in accordance with statements of the Architect regarding the dates by which such actions would be taken and (ii) directed late modifications of the brick requirements, all of which unreasonably interfered with Kidde's construction schedule and delayed the start of Kidde's brickwork.

3. Delays due to Interior Finish Work Required in Temporary Buildings #1, #2 and #3.

The Owner required extensive interior finish work

for Temporary Buildings #1, #2 and #3 substantially in excess of that originally contemplated by the parties. Completion of this additional interior finish work, incorporation of the numerous modifications required by the Owner to the interior layout and correction of improper construction resulting from failure of the Architect's design of the Temporary Buildings to conform to the requirements of the Hartford Building Department resulted in a substantial delay to Kidde's completion of the Temporary Buildings and therefore the overall project.

4. Delay to North Service Unit of Existing East Wing.

Due to the failure of a contractor employed by the Owner to complete certain preconstruction work pursuant to schedule, Kidde's demolition work related to the north service unit of the existing East Wing was delayed.

5. Delay due to Lack of Access to Connecting Link.

The contract drawings and phasing schedule prepared by the Architect did not indicate that any hospital facilities were located in the connecting link, or that any facilities were required to be moved from the connecting link to another portion of the hospital prior to demolition of the connecting link by Kidde. The Owner, however, subsequently required that Kidde first construct an emergency observation room in the East Wing in order to accommodate a similar facility located in the connecting link before Kidde would be granted access to the connecting link for purposes of demolition. As a result of this additional requirement by the Owner and the forced suspension of Kidde's work, Kidde incurred a severe delay to its overall construction schedule.

6. Delay due to Foundation Conditions.

The original bid documents indicate a row of steel sheet piling along the east face of the foundation for the proposed new West Wing. This sheet piling was deleted in later drawings issued by the Architect.

During the course of the excavation for the foundations of the new West Wing, Kidde encountered dangerous excavation conditions in the area where the sheet piling had been deleted. Kidde advised the Owner, through the Architect, of these conditions. Subsequently, after issuance of an order by the Hartford Building Department directing that the work be stopped and numerous discussions between the Architect and

Kidde, the parties agreed to implement a plan proposed by Kidde, consisting of underpinning the footing on the west side of the East Wing.

Due to the failure of the contract drawings to provide an adequate foundation design, resulting in the dangerous excavation conditions encountered, and the further aggravation of these circumstances caused by the Architect's failure to promptly resolve the foundation deficiencies, Kidde incurred an extensive delay in its excavation for the West Wing and the overall construction schedule.

7. Delays Due to Limited Access to the East Wing and Rephasing of the Work.

The Owner did not provide Kidde with access to the East Wing in accordance with the contract documents. The substantially modified and limited access permitted by the Owner caused interruption, delay and inefficiency to Kidde's alteration work in the East Wing and to its work on the East Wing wraparound.

8. Delays due to Additional Temporary Partitions.

Contrary to the requirements of the contract documents, the Owner granted Kidde access to work areas in a piecemeal fashion, i.e., to work areas significantly smaller and in more divergent locations than those indicated in the contract phasing schedule.

In order to perform construction work in these small areas and simultaneously provide the Owner access to adjacent areas, Kidde was forced to construct numerous temporary partitions which would not otherwise have been required. The Owner is liable for the costs incurred and the delay to the construction schedule.

9. Delay to X-Ray Rooms due to Lack of Information Regarding Owner-Furnished Equipment.

This delay to Kidde's work was caused by the Owner's and the Architect's failure to furnish details and other information related to Owner-furnished x-ray illuminators. From the start of the project Kidde made numerous and continuous requests for detail information related to Owner-furnished equipment. Due to the Owner's and Architect's

failure to furnish urgently required information regarding this Owner-furnished item, Kidde incurred numerous delays to the installation of the x-ray illuminators and related construction work.

10. Delay due to Low Pressure Steam Line.

Due to the reduction of the height of the wraparound by the Owner from its originally planned height to a height equaling that of the fifth level of the East Wing, it was necessary to relocate the low pressure steam line originally designed to be installed in the sixth level ceiling of the wraparound. The failure of the contract drawings to indicate the proper design of this steam line and the Architect's failure to promptly resolve questions regarding it resulted in considerable disruption and delay to this and other work.

11. Delay to Kitchen.

The inordinate delay by the Owner and the Architect in the furnishing of information for the preparation of shop drawings for new kitchen equipment and the relocation of old equipment, and numerous changes and requests for cost proposals and holds placed on portions of the work seriously delayed Kidde in its kitchen installation and subsequent work.

12. Delay to Wraparound due to Discrepancy in Finished Floor Elevations.

A serious dimensional discrepancy between the Architect's structural drawings and architectural drawings required Kidde to make substantial changes and perform additional work to the slab formwork already in position, substantially delaying Kidde's work schedule.

13. Delay to Operating Rooms due to Failure of Design to Conform to Building Code.

The failure of the contract drawings and specifications to indicate the proper type of electrical receptacles in conformance with Building Code requirements of the City of Hartford, Connecticut for hospital operating room areas and the Architect's failure to promptly resolve questions arising from these deficiencies delayed Kidde's construction work in the operating room areas of the East Wing.

14. Delay to Special Diet Room.

The delay by the Architect in furnishing the information lacking in the contract drawings in respect of a pipe chase to be installed in the special diet room substantially delayed Kidde's work in this area.

15. Delay to Therapeutic Room.

The failure of the drawings to specify the precise location of an Owner-furnished tank hoist and trolley monorail in the Therapeutic Room caused Kidde to incur a severe delay in the installation of these items and related work.

16. Delay to Cafeteria.

As a result of the Architect's design failure to recognize the need for a partition enclosing an air transfer unit, which had been relocated in the cafeteria by Kidde at the direction of the Architect, and the inordinate time required by the Owner and Architect to process the related change order, Kidde was forced to disrupt and delay its other work in order to provide the required floor-to-ceiling partition wall.

17. Delay to East Duct Shaft and Penthouse due to Lack of Access, Phasing and Equipment Redesign.

Due to design deficiencies in the contract documents, it was impossible for Kidde to install the additional mechanical equipment in the east duct shaft and penthouse of the East Wing in a manner which would permit the existing equipment to remain operational during the installation period. The time required by the Architect to resolve these problems caused Kidde to incur a substantial delay to its mechanical and related installation work.

18. Delay due to Deficiencies in Emergency Generator Exhaust Duct Design.

The deficiencies in the original design of the emergency generator exhaust duct, the inadequacy of the redesign by the Architect, and the extended work caused by the Architect's third design revision substantially interfered with and delayed installation and completion of the ductwork.

19. Delay to Roof and Penthouse due to Re-routing Existing Vent Pipes.

The re-routing of existing vent pipes required by the extension of two existing penthouses, for which no provision was made in the contract drawings, delayed Kidde's roofing, flashing and plumbing work in the area of the vent pipes.

20. Delay to Air Compressor System.

As a result of design deficiencies concerning the air compressor system and installation of a new air compressor, and the Architect's delay in resolving design questions that arose therefrom, Kidde incurred a lengthy delay to the installation of the compressed air and related systems.

21. Delay in respect of Locating Fire Annunciator.

The failure of the contract drawings to properly indicate where the fire annunciator was to be installed and the dispute between the Architect and the Hartford Fire Department concerning its proper location substantially delayed the installation of service rough-in work of all nine floors of the new West Wing.

22. Delay to 3rd, 4th and 5th Levels due to Changes in X-Ray Equipment and Layout.

Continuous changes to the radiology equipment and design layout by the Owner and the Architect, and the issuance of stop orders and work holds by the Architect to Kidde during a long period of indecision substantially delayed Kidde in its work related to the radiology equipment installation.

23. Delay to Laundry Facility due to Missing Ductwork Details.

As a result of the failure of the contract drawings to provide necessary details concerning ductwork and the Architect's delay in providing this information, Kidde's fabrication and installation of ductwork in the laundry area was substantially delayed.

24. Delay due to Lack of Exhaust Ducts and Electrical Services for X-Ray Processors.

The contract drawings failed to indicate the necessary

air exhausts and necessary electrical services required for the Owner furnished x-ray processors. As a result of these deficiencies and the Architect's delay in furnishing the missing information, Kidde's rough-in work related to these items was delayed.

25. Delay due to Installation of Double Doors on 5th Level.

The contract drawings and later sketches issued by the Architect covering the area in which said doors are located contained discrepancies and inconsistent information. As a result thereof and the Architect's delay in correcting these discrepancies, Kidde incurred a delay to its work.

26. Delay to Corridor.

The failure of the contract documents to specify the necessary services for a refrigerator and wash sink at the medicine station delayed Kidde's service rough-in and related work.

27. Delay to West Duct Shaft Due to Lack of Access and Changes to the Contract.

Kidde was delayed while the Architect was required to correct the inadequate design for the west duct shaft, to relocate the shaft and to prepare a phasing schedule for work on it. Kidde's work was further delayed by lack of adequate access to the area of the duct shaft.

28. Delay due to Piping Interference with Walk-in Freezer.

The Architect's defective plumbing drawing in respect of piping installation for a sink within a walk-in freezer, requiring additional work for correction, delayed Kidde.

29. Delays due to Changes in the Hollow Metal Door Frames.

Kidde's work on installation of door frames and related lath and plastering work throughout the West Wing was delayed by the Architect's numerous changes made to the contract drawings and the many holds placed on the work.

30. Delay to Wraparound due to Obnoxious Fumes.

The failure of the Architect and the Owner to anticipate (1) that exhaust fumes from the existing laundry and laboratories would penetrate the wraparound and (2) the possibility of exposure of personnel to radioactive rays from the X-ray equipment as the result of the lack of shielding in the North Wall affected the production rate of Kidde's labor force and resulted in serious delays to Kidde.

31. Delay to 2nd Level due to Exposure of Fire Line.

The prolonged delay by the Architect in authorizing the correction of a design defect, which violated City of Hartford, Connecticut regulations in respect of an exposed fire line at a stairwell, substantially delayed Kidde's plumbing work in the subject area.

32. Delay to Toilet Facilities Due to Dimensional Discrepancies.

The repeated revision by the Architect of the dimensions of toilet facilities on the second and third floors delayed Kidde's work.

33. Delay to Laundry Facility due to Roll-Up Door.

Kidde's work on the new laundry facility was delayed by the Architect's repeated changes with respect to the design of the non-regular access door for the laundry room.

34. Delays to Conductive Flooring.

The failure and delay of the Architect in specifying substitute flooring for unobtainable flooring material specified in the contract documents substantially delayed Kidde's work.

35. Delay to 4th Level.

The lack of coordination between the structural and mechanical drawings resulted in there being inadequate ceiling space to install required ductwork. As a result, Kidde was delayed, as was the ductwork fabrication schedule, while the Architect attempted to solve the problem and while Kidde did remedial work to correct the original design deficiency.

36. Delay to Air Diffusers on 5th - 9th Levels.

The Architect's contract drawings were insufficient and lacking in description of how Kidde was to connect the air diffusers installed in the sound lock ceilings to the respective supply ducts. The delay in supplying this information substantially delayed Kidde's construction schedule.

37. Delays to West Shaft due to Missing Mechanical Details.

Defective and incomplete contract drawings for sheet metal work substantially interfered with Kidde's progress, delaying it in the fabrication and installation of related ductwork. The confusing and inconvenient manner of transmittal of vital information concerning the missing mechanical details added substantially to Kidde's problems and interfered with its construction schedule.

38. Delay to Mechanical Room due to Lack of Drainage Facilities.

The drain required for an air conditioner in a West Wing mechanical room was initially omitted from the contract drawings and then designed in a manner which violated City of Hartford, Connecticut building requirements, resulting in a delay in the City's issuance of a Temporary Certificate of Occupancy and a delay to Kidde resulting from the necessity of correcting the violation.

39. Delay to Laundry Facility.

Deficiencies in the electrical design and the failure of the drawings to indicate which of two power panels were to feed laundry room condensate pumps delayed completion of the electrical and associated work in the laundry facility.

40. Delays to 5th - 9th Levels due to Sleeves and Mechanical Risers to Fan Coil Units.

Improper coordination by the Architect in the preparation of the architectural and structural drawings interfered with and delayed the installation of sleeves penetrating structural beams and of mechanical risers to fan coil units.

41. Delays to 5th - 9th Levels due to Physiological Monitoring System.

The insufficiency of the contract drawings in

locating the control console for the physiological monitoring system and the change in its requirements by the Owner interfered with the installation of conduit runs and resulted in delays to Kidde's schedule.

42. Delay to Laundry Facility Exhaust Ductwork.

The failure of the contract drawings to provide for exhaust ductwork connecting the laundry equipment to the exhaust fan in the laundry room delayed Kidde's work.

43. Delay to Laboratories due to Wood Casework.

The initial approval of the wood casework for the laboratories by the Architect and its subsequent arbitrary and capricious reversal of approval after a prolonged period and the substitution by the Architect of an alleged approved equal substantially and materially delayed Kidde in its wood casework installation and related laboratory completion work and caused Kidde to incur substantial extra costs.

44. Delay on 5th - 9th Levels Due to Telephone Conduits.

Kidde's work involving installation of telephone and related equipment in the West Wing was delayed as a result of the deficient design for the hook-up of the telephone panels into the overall building telephone system.

45. Delay to Conference Room and Solaria, 5th - 9th Levels, due to Lack of Space for Fan Coil Units.

The failure of the contract drawings to provide for necessary mechanical work in the ceilings of the conference room and solaria of the West Wing caused delay to Kidde's work during the Architect's correction of the problem.

46. Delay to Kosher Kitchen due to Revised Layout.

The failure of the Architect to supply information regarding the installation of various plumbing and other installation requirements of the kosher kitchen and the delay by the Architect in the approval of the change order therefor delayed this area of Kidde's work.

47. Delay to 1st Level due to Discrepancies in Lighting Arrangement.

Deficiencies in the original contract documents with respect to lighting arrangements in certain rooms required redesign by the Architect which delayed Kidde's work.

48. Delay to Stairway due to Deficient Fire Line Design.

The Architect's delay in resolving a deficient fire line design delayed Kidde's door frame and related completion work.

49. Delay to Wall Partitions D[illegible] to Fire Hose Cabinets.

The wall partitions in the West Wing were delayed by the design error in respect of the placement of the fire hose cabinets. The correction of the deficiency delayed Kidde's work on the wall partitions and related installation of fire cabinets.

50. Delay to Dictation Rooms and Janitors' Closets, 5th-9th Levels, due to Interference of Pipe Sleeves with Block Wall.

Dimensional discrepancies and insufficiencies in the contract drawings resulted in interference of the pipe sleeves with the block wall and plumbing to slop sinks in the West Wing. The changes by the Architect in the design and continuous corrections substantially delayed Kidde's block work and the related plumbing in the affected areas.

51. Delay to X-Ray Rooms due to Ceiling Drop Configurations.

The deficiency of the contract drawings and the delay by the Architect in replying to a Field Question requesting information, clarification and confirmation of ceiling heights in certain x-ray rooms required Kidde to hold work in abeyance and delayed its construction schedule.

52. Delay to Board Room due to Heating and Ventilating System.

The prolonged delay by the Architect in correcting the omissions in the design of the original and revised

heating and ventilating system and the issuance of superseding sketches substantially delayed Kidde in this area of the work.

53. Delay to Special Diet Room due to Lack of Ductwork.

The failure of the Architect's contract drawings to show ductwork leading from the exhaust hood to the main exhaust system, necessary redesign, delay in the approval of the change order to cover the cost of the additional ductwork and the resultant delay in the fabrication of the additional ductwork materially delayed Kidde.

54. Delay to Central Supply Room.

The discrepancy between the contract design drawings and Owner-furnished equipment and the inordinate delay in approval of the related change order resulted in a substantial delay to Kidde's work.

55. Delay to Central Supply Room.

The purchase of autoclave and sterilizer equipment by the Owner different from that indicated in the contract drawings and which failed to match the installed utility services, requiring additional Kidde work, and the delay in the approval of the change order substantially delayed Kidde's equipment installation work in this area.

56. Delay to Laundry Facility due to Water Supply.

The Architect's failure to determine the suitability of well water for use by the laundry equipment as originally designed, and the Owner's delay in supplying information concerning the type of laundry equipment to be used materially interfered with the completion of the mechanical installation and the operation of the laundry facility.

57. Delay due to Conflicting Ceiling and Light Fixtures Configurations.

Kidde's work on the 4th level of the East Wing was materially delayed by conflicts in the contract drawings for the ceiling and light fixture configurations and the resulting change to Kidde's work required to remedy the problem.

58. Delay to Kitchen due to Change from Gas to Electric Operation.

The change of the design of the main kitchen and the decision by the Architect to change from a gas operation to an electrical operation necessitated the redesign of the kitchen. The continuing inadequacy of the redesign for the new services caused a severe delay to Kidde's completion of the work in the kitchen area.

59. Delay to Elevator Machine Room.

The inadequacy of the design for the elevator machine room required substantial redesign and additional work by Kidde with respect to this room, which delayed Kidde.

60. Delay to Patient Bedrooms, 5th - 9th Levels.

Patient bedrooms were deficiently designed in that the adjoining toilet areas for these rooms were too small to accommodate the specified toilets. The redesign necessary, as well as the additional work required of Kidde, delayed Kidde's work progress on the lavatory plumbing and related installation work.

61. Delay to Linen Chute.

The Architect's failure to recognize the greater distance between the laundry chute and fascia of the new access wall prevented the re-use of old laundry chute doors as specified in the contract design. The design and fabrication of new doors delayed Kidde in its laundry chute door installation and related construction work.

62. Delay to Dark Rooms.

Kidde's work on dark rooms was delayed by the failure of the mechanical and architectural drawings to adequately specify use of light-proof transfer grilles. The time required for redesign, additional work, and approval of the necessary change order severely delayed Kidde's work progress.

63. Delay due to Old Boiler Explosion and Fire.

Kidde's work in the new laundry area, to be located in the old boiler room, East Wing, was delayed by conditions resulting from an explosion and fire in that area while it was still under the control of the Owner.

64. Delay to Laundry Facility.

Failures in the mechanical design relating to the water supply which feeds the medical vacuum pumps and medical air compressors caused substantial delay in the new laundry area renovation work and compelled Kidde to maintain existing pumps and compressors substantially beyond the times contemplated by the contract.

65. Delay to the Kitchen.

The failure of the contract drawings to indicate a workable kitchen ceiling arrangement and the neglect of the Architect to provide such information substantially delayed Kidde's kitchen ceiling installation work.

66. Delay to Machine Room.

A conflict in the contract drawings for the 4th floor machine room, with respect to the doors for the room and piping located therein, necessitated redesign of the room. The time necessary for redesign, along with the resulting extra work, materially delayed Kidde's work progress.

67. Delay to Patient Bedrooms, 5th - 9th Levels, due to Door Discrepancies.

The conflicts in the drawings with respect to the doors for patient bedrooms on the 5th through 9th levels caused Kidde delay while the Architect resolved these inconsistencies.

68. Delay to East Penthouse due to Installation of Additional Power Panel.

Changes in the contract drawings with respect to the air handling unit and its power source caused by rephasing substantially delayed Kidde's mechanical installation in the East Penthouse.

69. Delay due to Service Outlets Interfering with Cabinet Work.

Conflicting information in the contract documents in respect of service outlets on the 3rd level placed on walls which were to have floor to ceiling cabinets, the resulting changes and relocation, and the delay in the approval of the consequent change order by the Architect substantially delayed Kidde's electrical and related completion work.

70. Delay to Patient Bedrooms, 5th - 9th Levels, due to Television Supports.

The failure of the contract drawings to indicate the necessary television set supports and the delay by the Architect in approval of the cost proposal and selection of the type of support delayed the completion of the patients' bedrooms and Kidde's construction schedule.

71. Delay to the Kitchen.

The failure of the Architect to adequately respond to Kidde's request for information concerning modifications to the mechanical and electrical services for the kitchen potwasher relocation and the new locations for other items of kitchen equipment, together with additional work required for the relocations, and the long delay by the Architect in the approval of the change order for the work substantially delayed Kidde's kitchen construction schedule.

72. Delay to Penthouse Roofs.

The failure of the contract documents to indicate the support requirements for the fans which were to be mounted on the east and west penthouses of the East Wing required Kidde to make changes in the fan support system and to perform other additional related work not within the scope of the contract, delaying Kidde substantially.

73. Delay to Director's Office.

The failure of the contract documents to indicate accurately the wall finishes for the Director's Office delayed Kidde's work in that area.

74. Delay to 4th Level due to Hypolon Flooring.

Omissions in the specifications and drawings in respect of Hypolon flooring required a stop work order until the Architect could solve a non-adherence problem, thus delaying Kidde's work.

75. Delay to Laundry Chute due to Sanitizer Installation.

The failure of the contract documents to indicate the necessity of a cold water supply line and its connection to the laundry chute sanitizer and the delay by the Architect in directing the addition of said line and the approval of the change order covering it resulted in a substantial delay in the installation of the sanitizer and the related plumbing work.

76. Delay to Kitchen.

The failure of the contract drawings to adequately allow for installation of the necessary kitchen exhaust hood, which installation was blocked by certain piping installed in accordance with the contract drawings, resulted in delay to Kidde's work in the kitchen.

77. Delay to Elevator Penthouse Roof.

Failure of the drawings to provide for drainage from the elevator penthouse roof resulted in delay to Kidde's work progress during correction of the omission and the performance of the additional work by Kidde.

78. Delay to 5th Level.

Kidde's mechanical and roughing-in work on the fifth floor was delayed pending correction by the Architect of conflicting and inadequate information in the mechanical and structural drawings.

79. Delay to 4th Floor Overhang.

Kidde's work was delayed by the failure of the drawings to provide for protection against freezing of certain pipes in the fourth floor overhang.

80. Delay to Canopy Roofs.

The failure by the Architect to provide for drainage facilities for the two concrete canopy roofs at the third level of the West Wing caused Kidde delay during the resolution of the problem by the Architect.

81. Delay to Patient Bedrooms, 5th - 9th Levels.

The specification by the Architect of urethane insulation for patient bedrooms on floors five through nine, which insulation violated the Connecticut code, caused delay to Kidde while the Architect attempted to correct the situation, and additionally while Kidde performed corrective work.

82. Delay to Laundry Chute.

Design errors in the contract documents in respect of the installation of the laundry chute in the East Wing and the subsequent delay by the Architect in resolving the problem caused delay in Kidde's laundry chute installation work.

83. Delay to Kitchen.

The failure of the contract documents to provide the necessary exhaust hood and ductwork over the short order stand and the failure by the Architect to couple the exhaust hood into the range hood fire protection system caused a substantial delay to Kidde in its installation and related completion work.

84. Delay to Pharmacy Room.

Inconsistencies in the contract drawings in respect of the services for a stainless steel sink in the pharmacy room and the delayed approval by the Architect of the change order for the work required Kidde to perform work out of sequence and much later than called for in the progress schedule, resulting in delay to Kidde.

85. Delay due to Electromagnetic Door Holders.

The failure of the contract drawings to indicate the necessary provisions for the installation of electromagnetic doors and the delay by the Architect in approving

the change order relating thereto substantially delayed Kidde's completion work.

86. Delay to Cafeteria.

The inadequate design of the lighting system in the cafeteria, West Wing, caused delay to Kidde's work while the Architect redesigned the system and while Kidde did additional work in accordance with the redesign.

87. Delay due to Air Balancing Problem.

The failure of the Architect to modify air balance design requirements resulting from elimination of equipment in the Hospital kitchen, discrepancies between actual fan loads and design loads and other deficiencies in the air balance design caused substantial delays to the air balancing operation.

88. Delay to 6th and 7th Level Patient Floors.

The failure of certain specified fire door hardware to comply with City of Hartford Building and Fire Departments' requirements resulted in delay to Kidde's work while the requirements were being met at the Architect's instruction.

89. Delay to Kitchen.

Kidde's work in the kitchen was delayed by the contract documents' failure to adequately provide for quarry tile in the kettle area and the Architect's direction that Kidde modify certain tile work.

90. Delay to Nurses' Locker Room.

Conflicts in the contract drawings with respect to door and ceiling types, heights, and sizes in the nurses' locker room and the inadequacy of the Architect's proposed locker arrangement resulted in delay to Kidde's work while the problems were resolved.

91. Delay to 5th Floor Corridor.

The failure of the contract drawings to indicate certain services which eventually protruded into the new passageway on the fifth floor, East Wing, caused delay to

Kidde's work during the relocation of the services at the Architect's direction.

92. Delay due to Increasing Size of Door.

Kidde's completion work on the 5th level, East Wing, was delayed by the Owner's instruction to enlarge a doorway already installed in the area and the failure of the Owner to promptly supply the necessary door.

93. Delay due to Lack of Details for Casework.

The Architect's revision of the contract drawings with respect to a room on the 4th level, East Wing, failed to include adequate directions concerning construction of required cabinets, thereby delaying Kidde's work pending receipt from the Architect of the necessary instructions and the delivery of the cabinets.

94. Delay to 4th Floor Corridor.

The failure of the contract drawings to show an existing steam pipe in a corridor on the fourth floor, East Wing, caused delay to Kidde's work progress during the period required for relocation of the unanticipated pipe.

95. Delay due to Architectural Finishes.

The Architect's change from a "patch and match" procedure for floors and walls in a third level, East Wing, area to a wire lath and plaster and floor tile procedure, after Kidde had substantially progressed using the initial design, caused delay to Kidde's work schedule.

96. Delay to Emergency X-Ray Area.

Due to deficiencies and changes to the contract drawings in respect of interferences in electrical and mechanical services, lighting arrangement and ceiling installation, Kidde was substantially delayed.

97. Delay due to Relocation of Piping. 2 m E357

The failure of the contract documents to indicate the relocation of several pipes passing through a room in the third level, East Wing, the actual relocation of said piping, and the related plumbing work caused delay to the construction schedule.

98. Delay due to Lighting Interference with Mechanical Services.

The design deficiency in the contract documents which prevented the installation of ceiling mounted lights on the fourth level as shown on the drawings due to piping interference delayed Kidde in its ceiling and related work in the area.

99. Delay to 5th Floor due to the Addition of Automatic Doors.

The Architect's directive to install automatic steel doors in the corridor of the fifth level post-operative area after Kidde had completed its renovative work in that area in accordance with the contract delayed Kidde.

100. Delay to Cobalt Facility.

Work on the cobalt facility depended on the vacation of Temporary Building #2 by the Owner and its removal and demolition of the foundations by the Owner's contractors. The delay by the Owner in vacating and removing the building and demolishing the foundations and Kidde's performance of the foundation demolition work after dispute with the Owner, substantially delayed and interfered with Kidde's work progress.

101. Delay to Laundry Facility due to Fireproofing Steel Beams.

The failure of the Owner and the Architect to provide for fireproofing of steel beams in the new laundry facility as required by the City of Hartford Building Department, which work was not in Kidde's contract, and the refusal and delay by the Owner in providing access to the facility substantially delayed Kidde's work progress.

102. Delays due to Lack of Information of Owner-Furnished Equipment.

The lack of coordination by the Owner and the Architect and their failure to furnish information concerning Owner-furnished equipment in a proper, timely and orderly manner interfered with Kidde's work progress and the coordination between Kidde and its subcontractors causing substantial disruptions and materially delaying and interfering with the overall project schedule.

103. Delays due to Long Approval Actions of Shop Drawings.

The failure of the Architect to promptly approve shop drawings materially delayed the ordering, manufacturing, and delivery of materials and equipment required by the contract.

104. Delays due to the Large Number of Change Orders.

The inordinate number of Change Orders substantially disrupted Kidde's manpower and resource schedule and adversely affected Kidde's overall construction schedule and work.

105. Delays due to Long Approval Actions of Change Orders.

The inordinate delays by the Architect and the Owner in approving a large volume of Change Orders seriously disrupted the orderly progress of Kidde's construction effort, adversely affected the overall project schedule and delayed Kidde's work.

106. Delays due to Large Number of Field Memoranda

The large number of deficiencies in the contract documents necessitated an inordinate number of Field Memoranda by Kidde to the Architect for action and direction substantially delaying contract performance.

107. Delays due to Long Reply Actions to Field Memoranda by the Architect.

The Architect's inordinate delays in responding to Kidde's Field Memoranda, its inability to provide adequate and necessary direction, its failure to give authority to on-site personnel to reply to Field Memoranda, all requiring that substantial portions of the work be held in abeyance for long periods of time, seriously delayed Kidde's overall construction performance and schedule.

108. Delays due to Large Number of Field Questions.

The inordinate number of Field Questions submitted to the Architect's head office seeking additional information and clarification of drawings and specifications, and

the contradictory instructions received in response thereto, subjected Kidde to formidable and unforeseeable problems seriously delaying and disrupting the orderly progress of construction and increasing the cost of performance.

109. Delays due to Long Reply Actions of Field Questions by the Architect.

The inordinate delays by the Architect in processing and responding to Field Questions, and the inadequate, deficient and incomplete responses thereto required important portions of the work to be held in abeyance for long periods of time and fabrication of equipment to be delayed, resulting in serious disruptions and delay in construction performance and increased costs.

110. Delays Caused by Field Sketches.

The Architect's disregard of the normal procedure of issuing revised drawings to reflect changes and revisions in the contract drawings and documents, its use of a large volume of small sketches in substitution of revised drawings, and the inadequacies of said sketches created substantial delays, increased costs, and contributed to the difficulties and complexities of an already difficult project.

111. Delays due to Obtaining Shutdown Approvals.

The failure of the Owner and the Architect to comply with Kidde's shutdown requests made in accordance with the contract resulted in undue and prolonged delays to Kidd 's mechanical installation work.

112. Delays due to Labor Strikes.

Jurisdictional labor disputes and industry wide strikes which occurred after scheduled contract completion dates extended the project substantially, for which Kidde is entitled to receive time extension and recover resulting costs.

113. Subcontractors' Claims.

The various actions and inactions of the Owner which delayed, disrupted and interfered with Kidde's work hereunder resulted in similar adverse effects upon the work

of Kidde's subcontractors on the project, thereby causing them to incur additional costs which have been asserted by them against Kidde and for which the Owner is responsible. All subcontractors' claims received by Kidde to date have been included in the amount claimed above and any further claims will be in addition thereto.

In accordance with said Stipulation and the Contract provisions, the Architect shall render a written decision in respect of Kidde's claim within ten (10) days of this written request for same, and upon failure of the Architect to act within ten (10) days, Kidde's claim shall be deemed denied and the parties shall proceed to arbitrate the claim with due dispatch in accordance with the rules and regulations of the American Arbitration Association.

Very truly yours,

WALTER KIDDE CONSTRUCTORS
INCORPORATED

Philip A. Sawyer
Senior Vice President

Recd by hand 8/29/74 2:14 pm

Exhibit N: 1974 Revised Claim by Boise in Kidde's Name

SUPREME COURT : NEW YORK COUNTY
SPECIAL TERM : PART I

THE MOUNT SINAI HOSPITAL OF HARTFORD, CONNECTICUT and STATE OF CONNECTICUT HEALTH AND EDUCATION FACILITIES AUTHORITY,	Index No. 16122/72
Petitioner,	
-against-	
WALTER KIDDE CONSTRUCTORS, INC.,	
Respondent.	

In compliance with the direction contained in the decision of Mr. Justice Harry B. Frank dated August 2, 1974 and published on August 9, 1974, on the motion by Petitioner to stay arbitration there is attached hereto the revised statement of claim of Walter Kidde Constructors, Inc. ("Kidde").

1. Throughout this revised statement of claim The Mount Sinai Hospital of Hartford, Connecticut and Connecticut Health and Education Facilities Authority shall be referred to collectively as "Mt. Sinai", "Hospital" or "Owner", the E. Todd Wheeler and The Perkins and Will Partnership as "Architect" and Syska & Hennessey as the "Architects' Engineer". Where such terms are used they are considered to include, but not be limited to, the following individuals:

As to the Hospital - Messrs. I. S. Geetter, R. Baker, C. Bernstein, M. Flam, D. Bernstein, N. Ellis, G. Schwolsky, H. Gampel, R. Koopman, C. Schnier, A. Cartin, P. Savin, G. Beitner, M. Title, L. Chester, C. Rogers, M. Solomken, W. Schloss, G. Osmen, H. Moscowich;

As to the Architect - Messrs. R. Levine, J. Lodes, G. Gilfeather, G. Vitale, E. Gay, N. Katz, R. Larson, R. Miller;

As to the Architects' Engineer - Messrs. D. Landis, A. Windman, V. Mandracchia, D. Dingle, H. Leitz, R. Lantiere, F. Stevens.

2. The revised claim follows, to the extent possible, the numbering and the lettering set forth in the letter request for information by counsel for the Hospital to counsel for Kidde dated February 4, 1974, except that where the court's decision does not require response to a portion of said letter the numbering and lettering have been omitted. The court's decision indicates that twenty-four of Kidde's claims are deemed sufficient except for damages. Hence there is no response to those categories other than damages.

3. The facts, dates, names, identification of documents, persons and organizations and number of days of delay are considered to be accurate. However, Kidde reserves the right to prove additional or different facts, dates, names, identification and days of delay as may be discovered or come to Kidde's attention up to and through the arbitration hearings in this proceeding.

4. The areas of work involved in each category of claim are described in "A" and "C" and the field questions, field memoranda and change orders referenced therein.

5. "B" and "C" of each category of claim set forth the items of work and areas initially delayed. In each case of delay, other areas and items of work, dependent on the initially delayed areas, were also correspondingly delayed.

6. "F(1)" of the revised claim sets forth the damages chargeable to each of the 113 categories of claims asserted. That letter and number corresponds to "F" of the letter of the Hospital's counsel dated February 4, 1974 above referred to. The amount of damage for each delay in each category of claims was arrived at in an earnest effort by Kidde to comply with the court's direction to itemize specific amounts of damages chargeable to each of the 113 categories of claims asserted. In a claim of this magnitude, with its concurrent and overlapping delays, it is impracticable, if not impossible, to isolate damages within each such category. Thus the sum total of the damages within each category of claim bears no relationship to the total amount of damages claimed by Kidde. Kidde reserves the right to prove and document its damages in the arbitration hearings in such manner as it may see fit.

7. The causes of delay are explained in "A" of each category of claim. However, "G", "H", "I", "J", and "K" supply additional information in this regard.

8. Kidde's claim herein in total dollar amount includes unresolved change orders in the approximate amount of $351,000.00, approximately $40,000.00 in unpaid time and materials invoices and costs and expenses incurred by Kidde in the pursuit of its claims.

9. With respect to "O", where a Field Memorandum was not answered, no entry has been made in the appropriate column.

10. With respect to "Q", where no response was forthcoming to a Kidde request for shutdown, no entry has been made in the appropriate column.

Exhibit O: First Few Pages of Arbitration Transcripts

VOL: I

AMERICAN ARBITRATION ASSOCIATION
NEW YORK CITY, NEW YORK
CASE NO. 1310-0356-72

In the Matter of the Arbitration

- between - : September 10, 1975

WALTER KIDDE CONSTRUCTORS, INC., :

Claimant, :

-vs- :

THE MOUNT SINAI HOSPITAL OF HARTFORD, CONNECTICUT and STATE OF CONNECTICUT HEALTH and EDUCATION FACILITIES AUTHORITY, (ASSIGNEE), :

Respondents, :

- and - :

E. TODD WHEELER and THE PERKINS & WILL PARTNERSHIP, :

Respondents. :

RECEIVED
SEP 22 1975
HART & HUME

American Arbitration Association
140 West 51st Street
New York, New York

For the American Arbitration Association:

SAMUEL S. ADLERSTEIN, Chairman.

JAMES E. BIRDSALL, Arbitrator.

LAWRENCE B. COONAN, Arbitrator.

A P P E A R A N C E S:

For Walter Kidde Constructors, Inc.

MESSRS. REID & PRIEST
40 Wall Street
New York, New York 10005
BY: LOUIS H. WILLEKEN, ESQ., of Counsel
and
WILLIAM J. O'DONNELL, ESQ., of Counsel.
and
STEPHEN H. KINNEY, ESQ., of Counsel.

For the Mount Sinai Hospital of Hartford, Conn. and State of Connecticut Health and Education Facilities Authority (Assignee).

MESSRS. GREENBERG, TRAYMAN, HARRIS, CANTOR, REISS & BLASKY
100 Church Street
New York, New York 10007
BY: JEROME REISS, ESQ., of Counsel
and
HOWARD BLUM, ESQ., of Counsel

For the Perkins & Will Partnership

MESSRS. HART & HUME
10 E. 40th Street
New York, New York 10016
BY: JOSEPH A. BERGADANO, ESQ., of Counsel
and
BARBARA W. THOMPSON, ESQ., of Counsel

ALSO PRESENT:

Dr. Isidore Geeter
Bernard Lippe
Norman Coplan, Esq., Counsel
John Lodes
Mario A. Fristachi

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VOLUME II

AMERICAN ARBITRATION ASSOCIATION
NEW YORK CITY, NEW YORK
CASE NO. 1310-0356-72

In the Matter of the Arbitration :

- between - : September 11, 1975

WALTER KIDDE CONSTRUCTORS, INC., :

Claimant, :

-vs- :

THE MOUNT SINAI HOSPITAL OF HARTFORD, CONNECTICUT and STATE OF CONNECTICUT HEALTH and EDUCATION FACILITIES AUTHORITY, (ASSIGNEE), :

Respondents, :

- and - :

E. TODD WHEELER and THE PERKINS & WILL PARTNERSHIP, :

Respondents. :

American Arbitration Association
140 West 51st Street
New York, New York

For the American Arbitration Association:

SAMUEL S. ADLERSTEIN: Chairman.

JAMES E. BIRDSALL, Arbitrator.

LAWRENCE B. COONAN, Arbitrator.

A P P E A R A N C E S:

For Walter Kidde Constructors, Inc.

MESSRS. REID & PRIEST
40 Wall Street
New York, New York 10005
BY: LOUIS H. WILLEKEN, ESQ., of Counsel
WILLIAM J. O'DONNELL, ESQ., of Counsel
STEPHEN H. KINNEY, ESQ., of Counsel.

For the Mount Sinai Hospital of Hartford, Conn. and State of Connecticut Health and Education Facilities Authority (Assignee).

MESSRS. GREENBERG, TRAYMAN, HARRIS, CANTOR, REISS & BLASKY
100 Church Street
New York, New York 10007
BY: JEROME REISS, ESQ., of Counsel.
and
HOWARD BLUM, ESQ., of Counsel.

For The Perkins & Will Partnership

MESSRS. HART & HUME
10 E. 40th Street
New York, New York 10016
BY: JOSEPH A. BERGADANO, ESQ., of Counsel
and
BARBARA W. THOMPSON, ESQ., of Counsel

ALSO PRESENT:

Dr. Isidore Geeter
Bernard Lippe
Norman Coplan, Esq., Counsel
John Lodes
Mario A. Fristachi
Edward Adler

I N D E X

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VOLUME III

AMERICAN ARBITRATION ASSOCIATION
NEW YORK CITY, NEW YORK
CASE NO. 1310-0356-72

In the Matter of the Arbitration :

October 7, 1975

- between - :

WALTER KIDDE CONSTRUCTORS, INC., :

Claimant, :

-vs- :

THE MOUNT SINAI HOSPITAL OF HARTFORD, CONNECTICUT and STATE OF CONNECTICUT HEALTH and EDUCATION FACILITIES AUTHORITY (ASSIGNEE), :

Respondents, :

- and - :

E. TODD WHEELER and THE PERKINS & WILL PARTNERSHIP, :

Respondents. :

American Arbitration Association
140 West 51st Street
New York, New York

224

For the American Arbitration Association:

SAMUEL S. ADLERSTEIN, Chairman.

JAMES E. BIRDSALL, Arbitrator.

LAWRENCE B. COONAN, Arbitrator.

A P P E A R A N C E S:

For Walter Kidde Constructors, Inc.

MESSRS. REID & PRIEST
40 Wall Street
New York, N. Y. 10005
BY: LOUIS H. WILLENKEN, ESQ., of Counsel
and
WILLIAM J. O'DONNELL, ESQ., of Counsel
and
STEPHEN H. KINNEY, JR., ESQ., of Counsel.

For the Mount Sinai Hospital of Hartford, Conn. and State of Connecticut Health and Education Facilities Authority (Assignee)

MESSRS. GREENBERG, TRAYMAN, HARRIS, CANTOR, REISS & BLASKY
100 Church Street
New York, N. Y. 10007
BY: JEROME REISS, ESQ., of Counsel
and
HOWARD BLUM, ESQ., of Counsel.

For Perkins & Will Partnership

MESSRS. HART & HUME
10 E. 40th Street
New York, N. Y. 10016
BY: JOSEPH A. BERGADANO, ESQ., of Counsel
and
BARBARA W. THOMPSON, ESQ., of Counsel

ALSO PRESENT:

Dr. Isidore Geetter
Bernard Lippe & Assoc., Consult. to Mt. Sinai Hosp.
Norman Coplan, Esq., (Personal Counsel for Perkins & Will)
John Lodes, Esq., (Personal Counsel for Perkins & Will)
Mario A. Fristachi, Esq., (Goetz & Fitzpatrick, P.C.)
Edward O. Adler, Esq., (Cunningham & Kaming, P.C.)
Donald E. Cordell, Esq., (Frank Briscoe Co., Inc.)

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VOLUME IV

AMERICAN ARBITRATION ASSOCIATION
NEW YORK CITY, NEW YORK
CASE NO. 1310-0356-72

In the Matter of the Arbitration

October 8, 1975

- between -

WALTER KIDDE CONSTRUCTORS, INC.,

Claimant,

-vs-

THE MOUNT SINAI HOSPITAL OF HARTFORD, CONNECTICUT and STATE OF CONNECTICUT HEALTH and EDUCATION FACILITIES AUTHORITY (ASSIGNEE),

Respondents,

- and -

E. TODD WHEELER and THE PERKINS & WILL PARTNERSHIP,

Respondents.

OCT 20 1975

AMERICAN ARBITRATION ASSOCIATION
140 West 51st Street
New York, New York

BEST COPY AVAILABLE

Now the American Arbitration Association:

SAMUEL S. ADLERSTEIN, Chairman.

JAMES E. BIRDSALL, Arbitrator.

LAWRENCE B. COONAN, Arbitrator.

A P P E A R A N C E S:

For Walter Kidde Constructors, Inc.

MESSRS. REID & PRIEST
40 Wall Street
New York, New York 10005
BY: LOUIS H. WILLENKEN, ESQ., of Counsel
and
WILLIAM J. O'DONNELL, ESQ., of Counsel
and
STEPHEN M. KINNEY, JR., ESQ., of Counsel.

For the Mount Sinai Hospital of Hartford, Conn. and State of Connecticut Health and Education Facilities Authority (Assignee)

MESSRS. ORSENBERG, TRAYMAN, HARRIS, CANTOR, REISS & BLASKY
100 Church Street
New York, New York 10007
BY: JEROME REISS, ESQ., of Counsel
and
HOWARD BLUM, ESQ., of Counsel

For Perkins & Will Partnership

MESSRS. HART & HUME
10 E. 40th Street
New York, New York 10016
BY: JOSEPH A. BERGADANO, ESQ., of Counsel
and
BARBARA WESLEY THOMPSON, ESQ., of Counsel

ALSO PRESENT:
Dr. Isidore Coetter
Bernard Lippe & Assoc., Consult. to Mt. Sinai Hospital
Norman Coplan, Esq., (Personal Counsel for Perkins & Will)
John Lodge, Esq., (Personal Counsel for Perkins & Will)
Mario A. Fristuchi, Esq., (Costa & Fitzpatrick, P.C.)
Edward C. Adler, Esq., (Cunningham & Kaming, P.C.)
Donald E. Cordell, Esq., (Frank Briscoe Co., Inc.)

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VOLUME V

AMERICAN ARBITRATION ASSOCIATION
NEW YORK CITY, NEW YORK
CASE NO. 1310-0355-72

229

In the Matter of the Arbitration : October 29, 1975

-between-

WALTER KIDDE CONSTRUCTORS, INC.,

Claimant,

-vs-

THE MOUNT SINAI HOSPITAL OF HARTFORD, CONNECTICUT and STATE OF CONNECTICUT HEALTH and EDUCATION FACILITIES AUTHORITY (ASSIGNEE),

Respondents,

- and -

E. TODD WHEELER and THE PERKINS & WILL PARTNERSHIP,

Respondents.

American ARbitration Association
140 West 51st Street
New York, New York

For the American Arbitration Association:

SAMUEL S. ALDERSTEIN, Chairman.

JAMES E. BIRDSALL, Arbitrator.

LAWRENCE B. COONAN, Arbitrator.

A P P E A R A N C E S:

For Walter Kidde Constructors, Inc.

MESSRS. REID & PRIEST
40 Wall Street
New York, New York 10005
BY: LOUIS H. WILLENKEN, ESQ., of Counsel.
and
WILLIAM J. O'DONNELL, ESQ., of Counsel.
and
STEPHEN H. KINNEY, JR., ESQ., of Counsel.

For the Mount Sinai Hospital of Hartford, Conn. and State of Connecticut Health and Education Facilities Authority (Assignee)

MESSRS. GREENBERG, TRAYMAN, HARRIS, CANTOR, REISS & BLASKY
100 Church Street
New York, New York 10007
BY: JEROME REISS, ESQ., of Counsel.
and
LEE MILICH, ESQ., of Counsel.

For Perkins & Will Partnership

MESSRS. HART & HUME
10 E. 40th Street
New York, New York 10016
BY: JOSEPH A. BERCADANO, ESQ., of Counsel.
and
BARBARA WESLEY THOMPSON, ESQ., of Counsel.

ALSO PRESENT:
Dr. Isidore Geetter
Bernard Lippe, Consultant to Mt. Sinai Hospital
Norman Coplan, Esq., (Personal Counsel for Perkins & Will)
John Lodes (Perkins & Will)
Mario A. Fristachi, Esq., (Goetz & Fitzpatrick, P.C.)
Edward O. Adler, Esq., (Cunningham & Kaming, P.C.)

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VOLUME VI

AMERICAN ARBITRATION ASSOCIATION
NEW YORK CITY, NEW YORK
CASE NO. 1310-0355-72

232

In the Matter of the Arbitration :

October 31, 1975

-between- :

WALTER KIDDE CONSTRUCTORS, INC., :

Claimant, :

-vs- :

THE MOUNT SINAI HOSPITAL OF HARTFORD, CONNECTICUT and STATE OF CONNECTICUT HEALTH and EDUCATION FACILITIES AUTHORITY (ASSIGNEE), :

Respondents, :

- and -

E. TODD WHEELER and THE PERKINS & WILL PARTNERSHIP, :

Respondents. :

American Arbitration Association
140 West 51st Street
New York, New York

For the American Arbitration Association:

SAMUEL S. ADLERSTEIN, Chairman.

JAMES E. BIRDSALL, Arbitrator.

LAWRENCE B. COONAN, Arbitrator.

A P P E A R A N C E S:

For Walter Kidde Constructors, Inc.

MESSRS. REIS & PRIEST
40 Wall Street
New York, New York 10005
BY: LOUIS H. WILLENKEN, ESQ., of Counsel
and
WILLIAM J. O'DONNELL, ESQ., of Counsel
and
STEPHEN H. KINNEY, JR., ESQ., of Counsel

For the Mount Sinai Hospital of Hartford, Conn. and State of Connecticut Health and Education Facilities Authority (Assignee)

MESSRS. GREENBERG, TRAYMAN, HARRIS, CANTOR, REISS & BLASKY
100 Church Street
New York, New York 10007
BY: JEROME REISS, ESQ., of Counsel
and
HOWARD BLUM, ESQ., of Counsel

For Perkins & Will Partnership

MESSRS. HART & HUME
10 E. 40th Street
New York, New York 10016
BY: JOSEPH A. BERGADANO, ESQ., of Counsel
and
BARBARA WESLEY THOMPSON, ESQ., of Counsel

ALSO PRESENT:

Dr. Isidore Gastter
Bernard Lippe, Consultant to Mt. Sinai Hospital
Norman Coplan, Esq., (Personal Counsel for Perkins & Will)

John Locke, (Perkins & Will)
Mario A. Fristachi, Esq., (Goetz & Fitzpatrick, P.C.)
William B. Flynn, Esq., (Goetz & Fitzpatrick, P.C.)
Edward O. Adler, Esq., (Cunningham & Keating, P.C.)

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VOLUME VII

AMERICAN ARBITRATION ASSOCIATION
NEW YORK CITY, NEW YORK
CASE NO. 1310-0556-72

235

In the Matter of the Arbitration :

November 5, 1976

- between - :

WALTER KIDDE CONSTRUCTORS, INC., :

Claimant, :

-vs- :

THE MOUNT SINAI HOSPITAL OF HARTFORD, CONNECTICUT and STATE OF CONNECTICUT HEALTH and EDUCATION FACILITIES AUTHORITY (ASSIGNEE), :

Respondents, :

- and - :

E. TODD WHEELER and THE PERKINS & WILL PARTNERSHIP, :

Respondents. :

American Arbitration Association
140 West 51st Street
New York, New York

For the American Arbitration Association:

SAMUEL S. ADLERSTEIN, Chairman.

JAMES E. BIRDSALL, Arbitrator.

LAWRENCE B. COONAN, Arbitrator.

A P P E A R A N C E S:

For Walter Kidde Constructors, Inc.

MESSRS. REID & PRIEST
40 Wall Street
New York, New York 10005
BY: LOUIS H. WILLENKEN, ESQ., of Counsel
and
WILLIAM J. O'DONNELL, ESQ., of Counsel
and
STEPHEN H. KINNEY, JR., ESQ., of Counsel

For the Mount Sinai Hospital of Hartford, Conn. and State of Connecticut Health and Education Facilities Authority (Assignee).

MESSRS. GREENBERG, TRAYNAM, HARRIS, CANTOR, REISS & BLASKY
100 Church Street
New York, New York 10007
BY: JEROME REISS, ESQ., of Counsel
and
HOWARD BLUM, ESQ., of Counsel

For Perkins & Will Partnership

MESSRS. HART & HUME
10 E. 40th Street
New York, New York 10016
BY: JOSEPH A. BERGADANO, ESQ., of Counsel
and
BARBARA WESLEY THOMPSON, ESQ., of Counsel

ALSO PRESENT:

Dr. Isidore Gantter
Bernard Lippe, Consultant, to Mt. Sinai Hospital.
Norman Coplan, Esq., (Personal Counsel for Perkins & Will)
John Lodes, (Perkins & Will)
Mario A. Fristachi, Esq., (Goetz & Fitzpatrick, P.C.)
Edward O. Adler, Esq., (Cunningham & Koning, P.C.)

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VOLUME VIII

AMERICAN ARBITRATION ASSOCIATION
NEW YORK CITY, NEW YORK
CASE NO. 1310-0356-72

238

In the Matter of the Arbitration : November 6, 1975

- between - :

WALTER KIDDE CONSTRUCTORS, INC., :

Claimant, :

-vs- :

THE MOUNT SINAI HOSPITAL OF HARTFORD, CONNECTICUT and STATE OF CONNECTICUT HEALTH and EDUCATION FACILITIES AUTHORITY: (ASSIGNEE), :

Respondents, :

- and - :

E. TODD WHEELER and THE PERKINS & WILL PARTNERSHIP, :

Respondents. :

American Arbitration Association
140 West 51st Street
New York, New York

For the American Arbitration Association:

SAMUEL S. ADLERSTEIN, Chairman.

JAMES E. BIRDSALL, Arbitrator.

LAWRENCE B. COONAN, Arbitrator.

BEST COPY AVAILABLE

A P P E A R A N C E S:

For Walter Kidde Constructors, Inc.

MESSRS. REID & PRIEST
40 Wall Street
New York, New York 10005
BY: LOUIS H. WILLENKEN, ESQ., of Counsel
and
WILLIAM J. O'DONNELL, ESQ., of Counsel
and
STEPHEN H. KINNEY, JR., Esq., of Counsel.

For the Mount Sinai Hospital of Hartford, Conn. and State of Connecticut Health and Education Facilities Authority (Assignee)

MESSRS. GREENBERG, TRAYHAN, HARRIS, CANTOR, REISS & BLASKY
100 Church Street
New York, New York 10007
BY: JEROME REISS, ESQ., of Counsel
and
HOWARD SLUM, ESQ., of Counsel.

For Perkins & Will Partnership

MESSRS. HART & HUME
10 E. 40th Street
New York, New York 10016
BY: JOSEPH A. BERGADANO, ESQ., of Counsel
and
BARBARA WESLEY THOMPSON, ESQ., of Counsel.

ALSO PRESENT:

Dr. Isidore Goetter
Bernard Lippe, Consultant to Mt. Sinai Hospital
Norman Coplon, Esq., (Personal Counsel for Perkins & Will)

John Lodes, (Perkins & Will)
Anthony M. Alessi, Esq., (Cunningham & Kaming, P.C.)
Mario A. Fristachi, Esq., (Goetz & Fitzpatrick, P.C.)

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Exhibit P: 1973 Sale Agreement

AGREEMENT

THIS AGREEMENT made and concluded at Cincinnati, Ohio, as of the 2nd day of February, 1973 by and between BOISE CASCADE CORPORATION, of Boise, Idaho, hereinafter referred to as the Seller, and A. M. KINNEY, INC., of Cincinnati, Ohio, hereinafter referred to as the Buyer, witnesseth that the parties do hereby agree as follows:

1. Sale of stock. The Seller shall sell to the Buyer for $95,000.00 all of the shares of the common capital stock of WALTER KIDDE CONSTRUCTORS, INCORPORATED, a New York corporation, hereinafter referred to as Kidde, outstanding as of time of transfer of all such shares to the Buyer; and the Buyer, in reliance on the representations and warranties of the Seller contained herein, and subject to the terms and conditions of this Agreement, shall purchase such shares from the Seller at such price.

2. Closing. The closing of the sale shall take place at a mutually agreeable place, on or before February 2, 1973. At the closing the Seller shall deliver to the Buyer, free and clear of all encumbrances, certificates for all such shares, in negotiable form and free of any and all restrictions or restrictive or other endorsements, with all requisite stock transfer stamps, if any be required, attached. Upon such delivery, the Buyer, subject to the terms and conditions hereof, shall deliver to the Seller a check, payable to the order of the Seller, for the purchase price.

3. Representations and warranties.

(A) The Seller represents and warrants as follows:

(a) Organization and standing of Company. Kidde is a corporation duly organized, validly existing, and in good standing under the laws of New York; and the copies of Kidde's certificate of incorporation, and all amendments thereof to date, certified by the Secretary of Kidde, and of Kidde's by-laws as amended to date, certified by Kidde's secretary, which have been delivered to the Buyer, are complete and correct as at the date of this Agreement. There are

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no states where the character of the properties owned by Kidde, or the nature of the business transacted by it, require Kidde to be licensed or qualified as a foreign corporation and in good standing as such, but where Kidde is not licensed or qualified, and not in good standing as a foreign corporation.

(b) Subsidiaries, etc. Kidde has no subsidiaries, is not a party to any unterminated joint ventures, and is not a partner in any partnership, except the following subsidiaries, namely, Walter Kidde Engineers, Inc., a New Jersey corporation, Walter Kidde Constructors International, Inc., a Delaware corporation, Kidde Caribe, Inc., a Virgin Islands corporation, and Process Installations, Inc., a Texas corporation, and the following joint ventures, namely, Jackson County Sports Complex, University of Connecticut, Terminal #3 Newark Airport (Port Authority of N. Y. and N. J.), College of Medicine & Dentistry (Newark, N.J.), 195 Broadway Corporation (Basking Ridge, N.J.), and Kansas City Control Tower, being Kidde Folios Nos. 1658, 1623, 1732, 1731, 1712, and 1618.

(c) Capitalization. Kidde's entire authorized capital stock consists of 20,000 shares of common stock, of which only 18,040 shares are issued and presently outstanding, of which in turn 385 shares are presently owned and held by Kidde as treasury shares. All such issued shares were validly issued and are fully paid and nonassessable.

(d) Stock ownership. The Seller is the owner, free and clear of any encumbrances, of 17,655 shares of Kidde's common stock, and is the sole stockholder of Kidde. There are no other shares of Kidde's capital stock owned by any other person, firm, fiduciary, agent, corporation, or organization.

~~(e) Tax returns. The returns of pay and all prior completed audits of Kidde's federal income tax returns by the Internal Revenue Service are will be properly prepared in the books and other financial statements and subject to no material objection.~~

(f) Directors and officers; compensation; banks. The Seller will, within five working days from the date hereof, deliver to the Buyer true and

complete lists, as of the date of this Agreement, certified by Kidde's Controller, showing: (i) the names of all of the directors and officers of Kidde and of each of its subsidiaries; (ii) the names of all persons now employed by Kidde and by each of its subsidiaries, together with a statement of the full amount paid or payable to each such person for services rendered or to be rendered, in part or in whole, in January and February in 1973, and the basis therefor; (iii) the name of each bank in which Kidde, and of each bank in which each subsidiary of Kidde, has an account, or safe deposit box, and the names of all persons authorized to draw thereon, or to have access thereto; and (iv) the names of all persons, of any, holding powers of attorney from Kidde and from each of its subsidiaries, together with a copy of each such power.

(g) Investigation. The Seller does not know or have reasonable grounds to know of any governmental investigation relative to Kidde, or to any subsidiary of Kidde, or the properties or business of any of them.

(h) Disclosure. No representation or warranty by the Seller in this Agreement, nor any statement or certificate furnished or to be furnished to the Buyer pursuant hereto, or in connection with the transactions contemplated hereby, contains or will contain any untrue statement of a material fact, or omits or will omit to state a material fact necessary to make the statements contained therein not misleading.

(i) The Seller is a corporation duly organized and existing and in good standing under the laws of the State of Delaware, and has taken all necessary corporate action to authorize the execution of this Agreement on its behalf by the officer signing in that capacity.

(B) The Buyer represents and warrants that it is a corporation duly organized and existing and in good standing under the laws of the State of Ohio and has taken all necessary corporate action to authorize the execution of this Agreement on its behalf by the officer signing in that capacity.

4. Access and Information. The Seller shall cause Kidde to give to the Buyer and to the Buyer's representatives full access, during normal business hours throughout the period prior to the closing, to all of the properties, books, contracts, commitments, and records of Kidde and of each of its subsidiaries, and shall furnish the Buyer during such period with all such information concerning the affairs of Kidde, and of each of its subsidiaries, as the Buyer reasonably may request. In addition, as promptly as possible after the closing, the Seller will furnish to the Buyer copies of the balance sheet and statements of profit and loss and retained earnings of Kidde as of December 31, 1972 and for the twelve-month period then ended, and as of January 31, 1973 and for the month then ended. In view of the agreement of the parties stated in paragraph 10 hereof, these statements are to be furnished only for the Buyer's general information and comparison with prior results of Kidde's operations, and the Seller makes no representations or warranties with respect thereto.

5. Conduct of Business Pending Closing. The Seller covenants that, pending the closing:

(a) No change will be made in the certificate of incorporation or regulations or by-laws of Kidde or of any subsidiary of Kidde, except as may be first approved in writing by the Buyer.

(b) No change will be made in the authorized or issued capital stock of Kidde or of any subsidiary of Kidde, and none of such stock, and none of any treasury stock, will be sold or issued by Kidde or by any of its subsidiaries.

(c) No contract or commitment has been entered into by or on behalf of Kidde or of any of its subsidiaries since January 1, 1973, and no contract or commitment will be entered into by or on behalf of any of them prior to time of closing of this sale, except with the written consent of the Buyer or except upon the condition that the Seller hold the Buyer harmless from all liability that may arise in connection with such contract or commitment.

(d) No [illegible] not now a director or officer of Kidde or of any of its subsidiaries will be made a director or officer of any of them, no change will be made affecting the banking or safe deposit arrangements or powers referred to in subparagraph (f) of paragraph 3, and no new powers will be granted by Kidde

or by any of its subsidiaries, without the Buyer's prior written approval.

(c) Except as otherwise requested by the Buyer, the Seller will use its best efforts, and cause Kidde to use its best efforts (without making any commitment on the Buyer's behalf), to preserve Kidde's business identity, to persuade Kidde employees designated by the Buyer from among those terminated by Kidde after December 31, 1972, to accept re-employment by Kidde, and to preserve for Kidde and for its subsidiaries the goodwill of their suppliers, clients, and others having business relations with them.

6. Resignations. The Seller shall make available to the Buyer the written resignations of the directors and officers of Kidde and of each of its subsidiaries, effective the date of the closing, except that Philip A. Sawyer shall continue to occupy the office of Senior Vice President, and Lynn W. Pett shall continue to serve as Controller, of Kidde, at the full expense and cost of the Seller, and for so long as necessary for the discharge of all obligations and the pursuit of any rights which Kidde might have in completing the category (a) contracts or in terminating the category (c) contracts referred to in paragraph 12 below and relative to the prosecution and defense of and against the litigation and/or claims referred to in paragraph 11 and para. 12(d) below. While Messrs. Sawyer and Pett occupy these offices, their authority, powers and duties as such officers shall be limited to the matter of discharging the obligations, pursuing the rights, and prosecuting and defending against the litigations and/or claims referred to in this paragraph, and they shall have no authority or right to act for or on behalf of, or as employees, agents, or representatives of, Kidde, or to commit Kidde, or incur any liabilities for Kidde, or expend any funds of Kidde, or draw upon any accounts of Kidde, except strictly within the scope of the matters to which their authority is hereinabove by this paragraph limited and as necessary to the exercise of that authority; and the Seller shall hold the Buyer and Kidde harmless from any liability or loss arising from any acts or

or omissions by Messrs. Sawyer and Pett during their tenure as employees of Kidde and until such time as the Seller notifies the Buyer in writing that such tenure may be terminated insofar as the requirements of this paragraph are concerned. Subject to the same undertaking by the Seller to hold the Buyer and Kidde harmless from any liability or loss arising therefrom, the Buyer agrees that it shall cause the Board of Directors of Kidde to take any action that the Seller may reasonably deem necessary or desirable only in connection with discharging the obligations, pursuing the rights, and prosecuting and defending against the litigations and/or claims referred to in this paragraph.

7. Condition at Time of Closing. All obligations of the Buyer and Seller respectively under this Agreement are subject to the condition that the respective representations of the Seller and Buyer contained in this Agreement are true and complete at the time of closing as though such representations were made at such time.

8. Indemnification. The Seller shall indemnify and hold harmless Kidde and the Buyer, at all times after the date of this Agreement, against, from, and in respect of: (a) all liabilities of Kidde (and of its subsidiaries) of any nature, whether accrued, absolute, contingent, or otherwise, existing at time of closing of this sale, including, without limitation, any tax liabilities, accrued in respect of, or measured by the income of Kidde, and of each of its subsidiaries, for, any period ending at or prior to such time of closing, or arising out of transactions entered into, or any state of facts existing, on or prior to such time; (b) all liabilities of, or claims against, Kidde, and each of its subsidiaries, arising out of the conduct of the business of Kidde, and of its subsidiaries, prior to said time of closing, or arising out of any presently existing contract or commitment (except as arising out of the performance, as of the date of closing, of Paragraph 12 "category"(b) contracts), or arising out of any contract or commitment entered into or made by Kidde, or by any of its subsidiaries, between the date hereof and the closing (except as permitted by the provisions of subparagraph (c) of paragraph 5); (c) all liabilities of, or claims against, Kidde arising out of the prior or future exercise of any and all presently outstanding powers of attorney given by Kidde, it being understood that Kidde is to have no obligation or responsibility to cancel or revoke any such powers unless and until requested so to do by the Seller; (d) any damage or deficiency resulting from any incorrectness in any certificate

or other instrument furnished or to be furnished to the Buyer hereunder; and (c) all actions, suits, proceedings, claims, demands, damages, assessments, arbitrations, judgments, and decrees, and all costs and expenses incident to any of the foregoing.

9. Nature and survival of representations. All statements contained in any certificate or other instrument delivered by or on behalf of the Seller pursuant hereto or in connection with the transactions contemplated hereby shall be deemed representations and warranties by the Seller hereunder, excepting financial statements as of December 31, 1972 and for 1972, and excepting all entries on financial statements as of January 31, 1973 and for January 1973. All such representations and warranties, and all agreements made by the Seller in this Agreement, or pursuant hereto, shall survive the closing and any investigation at any time made by or on behalf of the Buyer.

10. Assets and liabilities. All assets and liabilities of Kidde, and its subsidiaries, as of time of closing of this sale, shall belong to and be assumed by the Seller as of such time of closing, except the shares owned by Kidde in other corporations and a total of $1000 in the capital accounts of those corporations (for which the Buyer shall pay the Seller, at the closing, $1,000 in addition to the price stated in paragraph 1 hereof), and except any trade or service marks owned by Kidde, and except as otherwise provided in this Agreement.

11. Claims. All existing and future claims by and against Kidde arising out of work performed by Kidde, and/or its subsidiaries, and joint ventures, prior to time of closing of this sale, and all existing and future claims and assessments against Kidde in any manner or for any cause arising out of the business, affairs, and operations of Kidde, and/or its subsidiaries, and joint ventures, prior to such time of closing, or fairly attributable or traceable to such performance, business, affairs, and operations prior to such time, shall be litigated or arbitrated, or defended against, by the Seller, at its expense, in the name of Kidde. The Seller shall be entitled to all net and after-tax proceeds

from said claims and shall be liable to Kidde and the Buyer for all damages adjudged, decreed, awarded, or assessed against Kidde or the Buyer in connection with said claims. The Seller shall hold the Buyer and Kidde harmless from any loss in connection with said claims and assessments.

12. Unperformed contracts. The Buyer and the Seller recognize the existence of four categories of wholly or partly unperformed contracts to which Kidde, and/or any of its subsidiaries, is now a party.

(a) Contracts that the Seller desires Kidde to complete, or cause to be completed, for the Seller's account, namely, Mt. Sinai Hospital, Los Angeles Traffic Court, Jackson County Sports Complex, University of Connecticut, Contentnal Insurance Co. (Glens Falls), Continental Airlines, Health and Mental Hygiene (New York), and Dormitory Authority (C.C.N.Y.), being Kidde Folios Nos. 1588, 5010, 1658, 1623, 1685, 5027, 1611 and 1577;

(b) Contracts that the Seller does not desire Kidde to complete, or cause to be completed, for the Seller's account, but that the Buyer desires Kidde to complete, or cause to be completed, for Kidde's account, namely, Western Electric Corp. (College Point and Kearny, N.J.), U.S. Lines (Oakland) and such portion of the work under Health & Mental Hygiene (Downstate New York) as is extra work authorized by letter from the client, being Kidde Folios Nos. 1653, 1715, 1730 and part of 1610;

(c) Contracts that the Seller does not desire Kidde to complete, or cause to be completed, for the Seller's account and that the Buyer does not desire Kidde to complete, or cause to be completed, for Kidde's account, namely, State of New Hampshire, Engelhard Industries, U.S. Lines (Hawaii), Kaufman & Broad (3), Hazeltine, Schering Corp. (Kenilworth), BCC Headquarters Building, GSA, Park Ridge Hospital, Veterans Administration (Boise), Terminal # 3 Newark Airport (Port Authority of N.Y. and N.J.), College of Medicine and Dentistry (Newark, N.J.), 195 Broadway (Basking Ridge, N.J.), Kansas City Control Tower, Endo Laboratories, and such portion of the work under Health & Mental Hygiene (Downstate New York) as is not included in category (b) above, being Kidde Folios Nos. 1726, 1727, 1735, 7018, 7021, 7022, 1599, 1608, 1709, 1739, 1734, 1732, 1731,

1712, 1618, 1704 and part of 1610;

(d) A contract that Kidde shall complete, namely, Health & Mental Hygiene (New York), Kidde Folio No. 1640, for the completion of which the Seller shall pay to Kidde its salary costs incurred in such completion, plus 25% of such costs, not exceeding, however, a total such payment of $120,000. All net sums recovered upon the presently existing and future claims of Kidde based on extra work required due to delays in the performance of work and/or based on escalation of costs by reason of such delays, under such contract, up to but not exceeding the total amount of such payments made by Seller hereunder, shall go to the Seller. One-half of the next $70,000 of any additional sums recovered upon such claims shall go to the Seller and the balance to Kidde, one-tenth of the next $50,000 recovered upon such claims shall go to the Seller and the balance to Kidde, and all other sums recovered upon such claims shall go to Kidde. Kidde shall not be entitled to payment for any of the time expended by any of its personnel in presenting, urging, and supporting such claims, and all costs of presenting, urging, supporting, litigating, and arbitrating such claims, other than the costs of time expended by personnel of the Seller and of Kidde, shall be borne by the Seller and Kidde in proportion to their respective shares of the aggregate sum recovered on such claims. Pending the determination of their respective shares of the aggregate sum recovered, Seller and Kidde shall advance nine-tenths and one-tenth, respectively, of all said costs. All existing and future claims against Kidde arising out of work performed by Kidde, and/or its subsidiaries, on the Health & Mental Hygiene (New York) contract (Kidde Folio No. 1640), prior to time of closing of this sale, or fairly attributable or traceable to such performance prior to such time, shall be litigated or arbitrated, or defended against, by the Seller, in the name of Kidde. The Seller shall hold the Buyer and Kidde harmless from any loss in connection with any such claims, and shall be liable to Kidde and the Buyer in the amount of all damages adjudged, decreed, or awarded against Kidde or the Buyer in connection with any such claims.

The Seller and the Buyer shall promptly cause Kidde to use its best efforts

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to terminate, or cause to be terminated, all of the contracts listed in category (c) above. The Seller shall hold the Buyer and Kidde, and its subsidiaries, harmless from all damages adjudged, decreed, or awarded, and judicial orders issued, against any of them by reason of the termination of the contracts listed in category (c) , and from all loss in connection with all claims or applications for such damages or orders, and shall (at its expense, and, as the case may be, in the name of Kidde or of a subsidiary of Kidde or of the Buyer) defend against all such claims and applications.

Performance of category (a) contracts shall be completed and performance of category (c) contracts shall be continued (until such contracts are terminated or are fully performed), by Kidde under the project management and control of the Seller. Continued performance of category (a) and (c) contracts may be accomplished entirely with Kidde personnel or, at the option of the Seller, in part or in whole with employees or agents of the Seller. The Seller shall pay to Kidde the actual cost (exclusive of profit) to Kidde of the performance of such contracts to the completion or termination thereof, shall be entitled to all receipts under such contracts , and shall hold the Buyer and Kidde harmless from any liability or loss arising from breach of such contracts or otherwise arising in connection with such contracts.

The Buyer and Kidde shall hold the Seller harmless from any liability arising from any acts or omissions by Kidde in the performance of category (b) contracts after date of closing of this sale, provided that such acts are committed by Kidde after such date, that such omissions consist of failure to perform acts that should have been performed by Kidde after such date but were not, that such liability is not fairly attributable or traceable to acts or omissions by Kidde, or occurring, prior to such date, and that, as a guide in the interpretation

of this paragraph, failure by Kidde to detect or correct, after such date, the omission of any act the omission of which occurred prior to such date is not to be considered, for the purpose of this Agreement, an omission ocurring after such date except to the extent that a reasonably careful professional engineer that had performed the work performed prior to such date would after such date have checked such work performed prior to such date and would have discovered such omission therein. The Seller shall, however, assume the responsibility and liability for and hold the Buyer and Kidde and its subsidiaries harmless from any costs, damages, and loss accruing to or sustained by any of them by reason of correction of such omissions so discovered. If such omissions are discovered after such date, but are discovered after the time when a reasonably careful professional engineer that had performed the work performed prior tosuch date, and that had not discovered such omissions prior to such date, would have discovered them, such costs, damages, and loss shall be the responsibility and liability of the Seller only to the extent that such costs, damages, and loss are not greater than they would have been had such omissions been discovered at the time, after such date, at which such reasonably careful professional engineer that had performed such prior work, and had not discovered such omissions prior to such date, would have discovered them.

13. Cooperation between Buyer and Seller. The Buyer shall cause such Kidde personnel as are re-employed by Kidde to be made available to the Seller, on reasonable advance notice, to assist in the prosecution or defense of any litigation and/or claims referred to in paragraph 11 above and to assist in the preparation of all federal and state income tax returns for 1972 and all of 1973 prior to the time of closing of this sale. The Seller shall pay to Kidde the actual cost (exclusive of profit) to Kidde of the time such personnel are so deployed, and their expenses.

The Seller may continue to use any of the bank accounts identified as acknowledged in paragraph 3(f) above, shall keep in Kidde's name such books

and records as are necessary, advisable, or customary in accordance with good business practice and for all tax purposes of Kidde, in connection with the prosecution or defense of such claims and/or litigation and in connection with the completion of category (a) and termination of category (c) contracts, shall deliver to Kidde all such books and records, or complete copies of same, and close (and not thereafter reopen in Kidde's name) all such bank accounts, promptly upon the conclusion of all such prosecution and defense and the completion and termination of all such category (a) and category (c) contracts, and shall permit Kidde to inspect and copy any and all such books and records, as necessary, for all tax and other reasonable business purposes of Kidde, at any time prior to the final delivery of such books and records, or copies thereof, to Kidde.

The Seller will concentrate in steel filing cabinets all Kidde accounting records, related correspondence, and legal documents for the years prior to closing of this sale and will deliver such cabinets and contents to Kidde at One Penn Plaza, New York, N.Y., on or before February 28, 1973. If such cabinets are equipped with locks, the Seller shall simultaneously deliver to Kidde the keys to such locks. If such cabinets are not equipped with locks, the Seller shall prior to such delivery seal shut the drawers of the cabinets, with seals that can easily and without injury to the cabinets be broken. The Seller shall at the time such cabinets and contents are delivered to Kidde furnish to Kidde a list of such cabinets, with a suitable written description of each such cabinet, sufficient for the positive identification thereof by Kidde. Kidde shall retain all such contents for six years from date hereof. The Seller shall have reasonable access to such contents during such period, and at the end thereof shall advise Kidde whether any of such records should be retained by Kidde for a longer period or, at Kidde's option, shipped to the Seller at the Seller's expense.

If in writing so requested by the Buyer, the Seller shall cause such former Kidde personnel as are at any time in the Seller's employ to be made available

to the Buyer, on reasonable advance notice, to assist Kidde or the Buyer in completion of the contracts identified in or pursuant to Paragraph 12(b) above. The Buyer shall pay to the Seller the actual cost (exclusive of profit) to the Seller of the time such personnel are at the Buyer's such request so deployed, and their expenses.

14. Taxation matters. Kidde will coordinate with the Seller the responses to be made by Kidde to routine questions and requests for information by tax authorities with respect to the Kidde tax years prior to closing of this sale. The Seller shall be responsible for any conferences with tax authority representatives relating to issues, and shall make any decisions as to the merits of questions presented and whether or not to dispute or accept positions taken by the revenue services concerned, for the Kidde tax years prior to such closing. The Seller shall be responsible for paying the expense of participation in all administrative conferences, hearings, and other legal proceedings related to tax matters for the Kidde tax years prior to such closing.

The words "after-tax proceeds" in paragraph 11 above are intended to mean that the Seller shall be entitled to the entire amount of such proceeds but shall pay to Kidde prior to tax due date the full amount of any and all taxes (and taxes on such payments) required to be paid by Kidde by reason of Kidde's receipt of such proceeds.

If the Internal Revenue Service successfully makes, or accepts, any adjustments in the Federal income tax returns of Kidde for periods prior to such closing that have the effect of decreasing the taxable income of Kidde for periods after such closing, Kidde will in the case of each such adjustment pay to the Seller a sum equal to the amount, if any, by which the Federal income taxes, if any, payable or paid by Kidde for the latter periods, unaffected by such adjustment, would have been or were greater than the Federal income taxes, if any, payable by Kidde for such latter periods, as affected by such adjustment; and if said

Service makes or accepts any adjustment in such returns that have the effect of increasing the taxable income of Kidde for periods after such closing, the Seller will in the case of each such adjustment pay to Kidde a sum equal to the amount, if any, by which the Federal income taxes, if any, payable by Kidde for such periods, as affected by such adjustment, are greater than the Federal income taxes, if any, payable or paid by Kidde for such periods, unaffected by such adjustment.

IN WITNESS WHEREOF, this Agreement has been signed, in triplicate and on behalf of the Buyer and the Seller, by persons duly thereunto authorized.

BOISE CASCADE CORPORATION

By Edson P. Williamson
ASSISTANT SECRETARY

A.M. KINNEY, INC.

By C. M. Kinney Jr.

Exhibit Q: Letter from Kidde to Boise's Counsel

Walter Kidde Constructors, Inc.

2900 Vernon Place
Cincinnati, Ohio, 45219
513/751 3934

January 8, 1975

209-2 Gx.

EXHIBIT
AD-5 (a)
Feb 26-76

Reid & Priest
40 Wall Street
New York, New York 10005

Attention: Mr. Steve Kinney

Dear Mr. Kinney:

At your request I am sending the enclosed material to help you to prepare answers to interrogatories in connection with the Mt. Sinai Hospital claims. Most of the material was taken from the Minute Books of the Corporation. Other information is based on my personal knowledge but may also be found in the appropriate general records of the business. Following are data not included in the copied material.

	Name	Date	Document
Managing Agents:	John A. Faas, Chicago Office	June 18, 1968 to June 30, 1972	Minutes of Board Meetings of Even Date
	Egon Cerner, Los Angeles Office	March 19, 1968 to December 1, 1972	Minutes of Board Meetings of Even Date
	Ernst Tonjes, Los Angeles Office	December 1, 1972 to Present	Business records
Sales Managers:	Refer to records of Boise Cascade Corporation		
Controllers:	C. H. Barnes	October 1973 to Present	Business records
	Lynn Pett	May 1972 to October 1973	Minutes of Board Meeting
Account-ants:	D. E. Conrad	February 1973 to Present	Business records
	Howard Marcus	unknown to February 1973	Business records
Bookkeepers:	Same as above		

Reid & Priest
40 Wall Street
New York, New York 10005

Attention: Mr. Steve Kinney

For information other than the above prior to February 1973 I refer you to the records in the possession of the Boise Cascade Corporation. I hope that this has supplied sufficient information to answer the interrogatories. If you have additional questions, please contact me.

Yours very truly,

WALTER KIDDE CONSTRUCTORS, INC.

J. Mel McKinley

JMM:peg

Exhibit R:
Various Letters by Boise in Kidde's Name

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Walter KIDDE CONSTRUCTORS Incorporated
ONE PENN PLAZA, NEW YORK, N.Y. 10001

Reply to: Post Office Box 12175
Blue Hills Station
Hartford, Conn. 06112

February 15,1973

Mr.John Lodes
E.Todd Wheeler and
The Perkins & Will Partnership
445 Hamilton Avenue
White Plains, N.Y. 10601

Re: Mt.Sinai Hospital
Hartford, Conn.

Dear Sir:

With reference to your letter dated February 2,1973, you are apparently skirting the issue.

Design changes at any time and particularly after work has started, can do nothing but impede production and delay the completion of our work.

Sketch drawings are a necessity in order to avoid any misunderstanding as to the amount and type of work involved. Sketch drawings, however, are of no real value unless they are complete. For example, as per Item 3 in your letter--for South Wing, Admitting Office,Waiting Room and Treatment Room have been issued and sprinkler locations have been discussed and determined. Prior to the sketches being issued, there were several discussions as to requirements in this area. Incomplete sketches were made on 1/22/73, revised on 1/29/73 and finally a sketch relating to the sprinkler was drawn on 2/5/73, 3 days after your letter.

These sketches relate only to a small area of the East Wing,3rd level, Emergency Out Patient Area.

I see no reason why, if design changes are to occur, that you, as the Architect, cannot discuss the changes with the Owner, and issue a complete drawing showing all changes and requirements.

We have adequate manpower on the job and our production is related to the information available to us, and the confined and limited area in which we are permitted to work.

Very truly yours,
Walter Kidde Constructors,Inc.,

L.Emil Hansen,Jr.
Superintendent

LEH,jr/ab
cc: Mr.David Ginsberg
File
Dr.I.Goetter
Mr.Ed.Gay

EXHIBIT
Feb 24-76

Designers, Engineers and Builders

cc: P. A. Sawyer
V. J. O'Donnell
File - Job 1588

258

KC

Walter KIDDE CONSTRUCTORS Incorporated 19 Rector Street New York (N.Y.) 10006 212 125 3090

REPLY TO: P.O.BOX 12175
BLUE HILLS STATION
HARTFORD, CONN. 06112

February 28,1973

Mr.John Lodes
E.Todd Wheeler and The Perkins
and Will Partnership
445 Hamilton Avenue
White Plains, New York 10601

Re: Mt.Sinai Hospital
Hartford, Conn.

Dear Sir:

I am in receipt of your communication to my office under date of February 20,1973, concerning progress on this project.

You apparently did not have time during your brief visit on February 14,1973 to ascertain that there were seven subcontractors and a total of ten trades working in the building and on the site. The trades consisted of carpenters,cement masons,bricklayers,laborers,electricians,plumbers,sheet metal workers,insulators,lathers and plasterers.

You must also be aware of the number of changes and additions to our scope of work issued by your firm which most certainly extends the time required to complete our work.

In order not to delay us further and eliminate the need for field questions and answers, we request again that you review the hospitals' requirements in the areas remaining, the omissions and contradictions, and up-date your drawings.

We and our subcontractors have a small amount of work remaining and find it very difficult to schedule manpower economically and efficiently when we are confined to such small areas and confronted with numerous changes and additions to our work.

Very truly yours,
Walter Kidde Constructors,Inc.,

L.Emil Hansen, Jr.
Superintendent

LEH,jr/ab

EXHIBIT
AD-6(b)Nt.
Feb 24-76

Designers, Engineers and Builders

W. J O'Donnell
S. G. Taylor

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KC

Walter KIDDE CONSTRUCTORS Incorporated.

ONE PENN PLAZA, NEW YORK, N.Y. 10001

Reply to: P.O.Box 12175
Blue Hills Station
Hartford, Conn. 06112

March 12,1973

Mr. Edward W.Gay
E.Todd Wheeler and
The Perkins & Will Partnership
445 Hamilton Avenue
White Plains, New York 10601

RE: Mt. Sinai Hospital
Hartford, Conn.

Dear Sir:

In response to your letter of February 21,1973, I question the reasoning of the architect for not recognizing the need for revised drawings when changes are made.

Although the electrical foreman has been proceeding upon oral directions and on a design as we go basis, drawings indicating changes are required for the following reasons:

1. Drawings are referred to by other trades.
2. Scheduling of manpower
3. Ordering materials.
4. For record purposes.
5. As a basis for compiling "as built" drawings.
6. To avoid errors in design.
7. To prevent possible violations of codes.
8. To avoid omissions.
9. To avoid further misunderstandings.
10. Contract requirements.

The refusal by the Architect to issue revised drawings recording changes indicates to me neglect of his obligations under the contract and/or an information gap between the Architect and the Owner.

Very truly yours,
Walter Kidde Constructors, Inc.

L.Emil Hansen, Jr.
Superintendent

LEH,jr/ab
cc: Dr. I.Geetter
Mr.John Lodes
Mr.Ginsberg
File

EXHIBIT
AD-6(c)NT
4-6 26-73

Designers, Engineers and Builders

NEW ADDRESS
345 PARK AVENUE
NEW YORK, N. Y. 10022

Walter Kidde Constructors Incorporated

19 Rector Street
New York, New York 10006
212/425-3030

260

September 25, 1973

E. Todd Wheeler and
The Perkins and Will Partnership
445 Hamilton Avenue
White Plains, New York 10601

Re: Payment Request No. 54 - Mt. Sinai Hospital

Gentlemen:

We respectfully request payment in the amount of $10,232.10 for work completed on the above project through the month of August 1973, per breakdown below:

Work Completed	$13,925,695.42
Less Retention	1,392,569.54
	12,533,125.88
Less Previously Billed	12,522,893.78
	$ 10,232.10

"We hereby certify that the accompanying payment request is a true and correct statement, and that all bills for Labor and Material Suppliers as of the payment request dated May 25, 1973, have been paid."

Very truly yours,
Walter KIDDE CONSTRUCTORS Inc.

H. Marcus

H. Marcus
Assistant Controller

PROG. CHECKED 9-28-73 DATE
BY: E.W. Gay FIELD SUPT
PAYMENT APPROVED 10/1/73 DATE
THE PERKINS & WILL PARTNERSHIP ARCHITECTS
BY

State of New York)
) SS
County of New York)

Subscribed and sworn to before me this
25th day of September 1973.

Arthur A. Doanbusch II

ARTHUR A. DOANBUSCH II
NOTARY PUBLIC, State of New York
No. 41-1000500
Qualified in Queens County
Commission Expires March 30, 1975

EXHIBIT
D-66
EC 26-76

345 PARK AVENUE
NEW YORK, N. Y. 10022
Walter Kidde Constructors Incorporated

19 Rector Street
New York, New York 10006
212/425-3030

261

September 25, 1973

E. Todd Wheeler and
The Perkins and Will Partnership
445 Hamilton Avenue
White Plains, New York 10601

Re: Payment Request No. 55
Mt. Sinai Hospital

Gentlemen:

We respectfully request payment in the amount of $1,392,569.54 for work completed on the above project through the month of August 1973, per breakdown below:

Work Completed	$13,925,695.42
Less Previously Billed	12,533,125.88
	$ 1,392,569.54

"We hereby certify that the accompanying payment request is a true and correct statement, and that all bills for Labor and Material Suppliers as of the payment request dated May 25, 1973, have been paid."

Very truly yours,
Walter KIDDE CONSTRUCTORS, Inc.

H. Marcus
Assistant Controller

State of New York)
) SS
County of NewYork)

Subscribed and sworn to before me this
25th day of September 1973.

ARTHUR A. DORNBUSCH II
NOTARY PUBLIC, State of New York
No. 41-1003500
Qualified in Queens County
Commission Expires March 30, 1975

EXHIBIT
D-66
Feb 26 76

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Walter Kidde Constructors Incorporated

345 Park Avenue
New York, N. Y. 10022

November 21, 1973

Mr. John B. Lodes
Perkins & Will
445 Hamilton Avenue
White Plains, New York 10601

Re: The Mount Sinai Hospital Project

Dear Mr. Lodes:

This is to reply to your letter of November 9, 1973 to the attention of Mr. Philip Sawyer, concerning the outstanding Punch List work at the Hospital.

We advised Mr. Edward Gay of your firm, by our letter of November 12, 1973, that certain Punch List work referred to in your communication of October 24 would be promptly attended to. Kidde is now proceeding with that work.

Further, as we stated in our letter of November 12, we have informed The Morris A. Fierberg Company, our mechanical subcontractor, of those items of Punch List work which are its responsibility, and we are again so notifying it, by copy of this letter and your letter of November 9.

Very truly yours,

Arthur A. Dornbusch, II

AAD:tes

CC: The Morris A. Fierberg Company

BCC: George Hastings, Esq.

EXHIBIT
A-D-6(g)
(PT) Feb 24-74

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WALTER KIDDE CONSTRUCTORS, INCORPORATED
345 PARK AVENUE
NEW YORK, NEW YORK 10022
212/593-7771

ARTHUR A. DORNBUSCH, II
Vice President

January 10, 1974

Perkins & Will
445 Hamilton Avenue
White Plains, N.Y. 10601

Attention: Mr. John Lodes

Re: Mount Sinai Hospital

Gentlemen:

At your urgent insistence, we re-did our submissions for T & M Changes Nos. 5, 6 and 7 the first two weeks in October and spent extensive sums of money in overtime to expedite the submissions to you. To date we have not heard from you as to the status of the approval, nor have we any idea as to the reason for the delay in approval.

Very truly yours,

WALTER KIDDE CONSTRUCTORS, INCORPORATED

Arthur A. Dornbusch, II
Vice President

AAD:tes

BCC: P. A. Sawyer
Dennis Mullins
Gary Sweeney
W. O'Donnell
J. Conway
S. Kinney

EXHIBIT
AD-6(h)
Feb 26-76

[redacted]
264

WALTER KIDDE CONSTRUCTORS, INCORPORATED
345 PARK AVENUE
NEW YORK, NEW YORK 10022
212/593-7771

ARTHUR A. DORNBUSCH, II
Vice President

March 14, 1974

BY HAND

E. Todd Wheeler and
The Perkins & Will Partnership
488 Madison Avenue - 17th Floor
New York, New York 10022

Re: The Mount Sinai Hospital Stage I
Additions and Alterations
Change Orders Nos. 249 thru
253 inclusive

Gentlemen:

Enclosed are all copies of the above-referenced Change Orders which you recently sent to me. These have been executed by the State of Connecticut, Health and Educational Facilities Authority, the Mount Sinai Hospital and Walter Kidde Constructors, Inc.

Would you please arrange to have all copies executed by an authorized representative of your firm and return the blue Contractor's Copy to our messenger who will wait. I trust that these can then be processed in the ordinary course and, accordingly, we will bill against them.

Very truly yours,

WALTER KIDDE CONSTRUCTORS, INCORPORATED

By _____
Arthur A. Dornbusch, II
Vice President

AAD:tes
Enc.

EXHIBIT
AD-6(i)
NY Feb 26-76

WALTER KIDDE CONSTRUCTORS, INCORPORATED
345 PARK AVENUE
NEW YORK, NEW YORK 10022
212/593-7771

ARTHUR A. DORNBUSCH, II
Vice President

May 7, 1974

Mr. E. Todd Wheeler and
The Perkins and Will Partnership
445 Hamilton Avenue
White Plains, New York 10601

Re: Payment Request No. 57
Mt. Sinai Hospital

Gentlemen:

We respectfully request payment in the amount of $78,242.00 for work completed on the above-referenced project per breakdown below:

Work completed to date	$14,003,937.42
Less previously billed	13,925,695.42
	$ 78,242.00

We hereby certify that the accompanying payment request is a true and correct statement and that all bills for labor and material suppliers as of the payment request made May 25, 1973 have been paid.

Sincerely,

Arthur A. Dornbusch, II
Vice President

AAD:tes

EXHIBIT
AD-6(j)
(MT) YC624-24

Exhibit S: Minutes and Director & Officer Resignations of Kidde

SPECIAL MEETING OF BOARD OF DIRECTORS

WALTER KIDDE CONSTRUCTORS, INCORPORATED

February 2, 1973

A special meeting of the Board of Directors of Walter Kidde Constructors, Incorporated was held at One Penn Plaza, New York, N.Y. on Friday, February 2, at 3:00 P.M. Eastern Standard Time pursuant to Waiver of Notice signed by all of the Directors.

Directors Ecton R. Manning, Jr., Arthur A. Dornbusch, II, and David R. Almond were present.

Ecton R. Manning, Jr. acted as Chairman of the Meeting and Arthur A. Dornbusch, II acted as Secretary.

After discussion, on motion duly seconded, it was

RESOLVED, that Ecton R. Manning, Jr. be elected Vice President of this Corporation, to serve for the ensuing year or until his successor shall be duly elected and qualified.

The Board further determined, after discussion, on motion duly seconded, that

WHEREAS, WALTER KIDDE CONSTRUCTORS, INCORPORATED (the "Corporation") effective January 1, 1970 became an Employer (as defined in the Boise Pension Plan) under, and has had in effect for its eligible salaried employees, the Boise Cascade Corporation Pension Plan for Salaried Employees which plan was effective January 1, 1964 and has been thereafter amended and restated from time to time (as in effect at December 31, 1972 the "Boise Pension Plan"); and

WHEREAS, this Corporation effective January 1, 1970 became

EXHIBIT AD-3 (MT) Feb 26-76

an Employer (as that term is defined under the Boise SRI Plan) and has had in effect for its eligible salaried employees, the Boise Cascade Corporation Supplemental Retirement and Investment Plan (formerly Profit Sharing Plan) which plan was effective January 1, 1964 and has been thereafter amended and restated from time to time (as in effect at December 31, 1972 the "Boise SRI Plan"); and

WHEREAS, this Corporation for valid business reasons deems it advisable to terminate its participation as an Employer under the Boise Pension and SRI Plans with respect to all of its active employees and all its former employees now retired and receiving benefits under the Boise Pension and SRI Plans; and

WHEREAS, Boise Cascade Corporation, pursuant to action of its Retirement Committee, has consented to partial termination of the Boise Pension and SRI Plans in the manner stated above and in accordance with the terms of those plans;

NOW, THEREFORE, be it

RESOLVED that, in accordance with Article XI of the Boise Pension Plan and in accordance with Article XII of the Boise SRI Plan, this Corporation hereby terminates those Plans as of December 31, 1972 with respect to its employees, past and present, who were participants in those Plans; and further

RESOLVED that, in accordance with Article XI of the Boise Pension Plan, that portion of the trust fund established to hold and invest the assets accumulated under the Boise Pension Plan and

attributable to the interests of the participating employees and former employees of this Corporation shall be segregated from the other assets and property held in such trust, that segregated, proportionate interest to be determined on an equitable basis and in accordance with actuarial assumptions currently applied in the administration of the Boise Pension Plan; and further

RESOLVED that in accordance with Article XII of the Boise SRI Plan, that portion of the trust fund established to hold and invest the assets accumulated under such Plan and attributable to the interests of each participating employee shall be segregated from the other property and assets held in such trust and distributed in accordance with the terms of the Boise SRI plan and related trust; and further

RESOLVED that it is in the best interest of this Corporation and its employees or former employees who are participants in either or both the Boise Pension and SRI Plans that the segregated portions attributable to the participants and held in trust shall, in accordance with instructions to be given by the Retirement Committee of the Boise Pension and SRI Plans to the trustees under the respective trust agreements heretofore established in connection with the referenced Plans, be, in the case of funds established under the Boise Pension Plan, applied toward the purchase of annuity contracts for the benefit of participating employees and former employees of this Corporation, and in the case of funds established under the Boise SRI Plan be either distributed in cash, or applied toward the purchase of annuity contracts to provide supplemental retirement benefits, or a combination thereof in accordance with such elections as the Retirement Committee shall make available to the participants in accordance with the terms of such Boise SRI Plan; and further

RESOLVED that the Retirement Committee of the Boise Pension and SRI Plans and any officer of this

Corporation be, and they hereby are, authorized to take all such steps and to execute all such instruments as that Committee and that officer, acting in their respective capacities, may deem necessary or appropriate in connection with the partial terminations of the referenced Plans and in general to carry out the intent of the foregoing resolutions; and further

RESOLVED that the action referred to in the preceding resolution by any officer of this Corporation may include, without limitation, the execution on behalf of this Corporation of any releases of present and future claims of this Corporation and its subsidiaries and indemnification against any action subsequently taken by any subsidiaries.

After further discussion, on motion duly seconded, it was

RESOLVED, that any officer of this Corporation be and hereby is authorized to take any steps that he may consider necessary or appropriate in connection with reduction of the authorized capital of any subsidiary of this Corporation.

There being no further business to come before the meeting, it was adjourned.

Arthur A. Dornbusch, II

Arthur A. Dornbusch, II, Secretary

APPROVED:

Philippe Schreiber

Philippe Schreiber, Attorney

[redacted] 270

CONSENT OF SHAREHOLDER
IN LIEU OF SPECIAL MEETING

THE UNDERSIGNED, being the sole shareholder of WALTER KIDDE CONSTRUCTORS, INCORPORATED, a New York corporation, does hereby consent to, adopt and approve in writing the following corporate action without a meeting in accordance with the provisions of paragraph 615 of the Business Corporation Law of the State of New York:

> RESOLVED that the resignations of William H. Colquhoun, dated January 22, 1973, and John E. Clute and Roy H. Gordon, dated January 26, 1973, are hereby accepted; and Ecton R. Manning, Jr., Arthur A. Dornbusch, II and David R. Almond are hereby elected directors of this Corporation in their stead, to serve for the ensuing year or until their successors shall be duly elected and qualified; and
>
> FURTHER RESOLVED that the directors are hereby authorized to take any action they may deem necessary or appropriate in connection with the termination of any pension, profit sharing, or other employee benefit plans, trusts and funds in which this Corporation or its subsidiaries or their present or former employees may be participants; and
>
> FURTHER RESOLVED that the Secretary of this Corporation is hereby authorized to take any action on behalf of this Corporation that he may deem appropriate in connection with the sublease of, or other acquisition of an interest in, space in the building known as One Penn Plaza in New York, New York, from Boise Cascade Corporation.

This consent in lieu of meeting shall become effective the 26th day of January, 1973.

BOISE CASCADE CORPORATION

By _____

APPROVED:

_____
David R. Almond, Attorney

WAIVER OF NOTICE

SPECIAL MEETING OF BOARD OF DIRECTORS

WALTER KIDDE CONSTRUCTORS, INCORPORATED

WE, THE UNDERSIGNED, being all the Directors of WALTER KIDDE CONSTRUCTORS, INCORPORATED, a New York corporation, do hereby waive notice of the time, place and purpose of the special meeting of the Board of Directors of said Corporation to be held the 2nd day of February, 1973, at 3:00 p.m. Eastern Standard Time at One Penn Plaza, New York, New York, and consent to the transaction of all such business as may come before said meeting or any adjournment or adjournments thereof.

IN WITNESS WHEREOF, we have hereunto set our hands this 2nd day of February, 1973.

Ecton R. Manning, Jr.

Arthur A. Dornbusch, II

David R. Almond

APPROVED:

Philippe Schreiber, Attorney

To the Board of Directors of

WALTER KIDDE CONSTRUCTORS, INCORPORATED

I hereby tender my resignation as Chairman and Member of the Board of Directors of WALTER KIDDE CONSTRUCTORS, INCORPORATED to take effect ~~at the pleasure of the Board~~ January 22, 1973.

Respectfully,

William H. Colquhoun

Dated: January 22, 1973

To the Board of Directors of

WALTER KIDDE CONSTRUCTORS, INCORPORATED

I hereby tender my resignation as a Member of the Board of Directors of WALTER KIDDE CONSTRUCTORS, INCORPORATED to take effect at the pleasure of the Board.

Respectfully,

J. E. Clute

Dated: 1/26/73

To the Board of Directors of

I hereby tender my resignation as a Member of the Board of Directors of WALTER KIDDE CONSTRUCTORS, INCORPORATED to take effect at the pleasure of the Board.

Respectfully,

Roy H. Gordon

Dated: 1/26/73

11/26/73

RESIGNATION

I, ARTHUR A. DORNBUSCH, II, hereby tender my resignation as a Director of WALTER KIDDE CONSTRUCTORS, INCORPORATED, effective as of this day.

Arthur A. Dornbusch, II

11:45 PM

2/2/73

Date

RESIGNATION

I, DAVID R. ALMOND, hereby tender my resignation as a Director of WALTER KIDDE CONSTRUCTORS, INCORPORATED, effective as of this day.

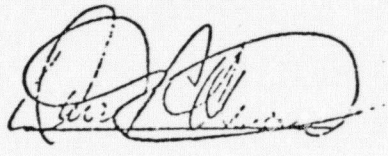
11:45 PM

2/2/73

Date

January 31, 1973

The undersigned, David R. Almond, does hereby resign as Assistant Secretary of Walter Kidde Constructors, Incorporated effective immediately.

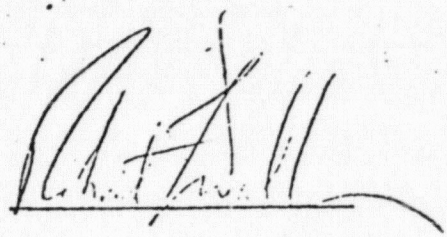


January 31, 1973

The undersigned, J. Randolph Ayre, does hereby resign as Assistant Secretary of Walter Kidde Constructors, Incorporated effective immediately.

January 31, 1973

The undersigned, Robert L. Wallace, does hereby resign as Assistant Treasurer of Walter Kidde Constructors, Incorporated effective immediately.



January 31, 1973

The undersigned, E. W. Cleary, does hereby resign as Vice President and Treasurer of Walter Kidde Constructors, Incorporated effective immediately.

E. W. Cleary

January 31, 1973

The undersigned, Will M. Storey, does hereby resign as Assistant Controller of Walter Kidde Constructors, Incorporated effective immediately.

Will M. Storey

To the Board of Directors of

WALTER KIDDE CONSTRUCTORS, INCORPORATED

I hereby tender my resignation as Secretary of WALTER KIDDE CONSTRUCTORS, INCORPORATED to take effect at the pleasure of the Board.

Respectfully,

Ecton R. Manning, Jr.

Ecton R. Manning, Jr.

11:45 PM

Dated: 2/2/73

RESIGNATION

I, ECTON R. MANNING, JR., hereby tender my resignation as Vice President and Director of WALTER KIDDE CONSTRUCTORS, INCORPORATED, effective as of this day.

Ecton R Manning Jr

11:45 PM

2/2/73

Date

To the Board of Directors of

WALTER KIDDE CONSTRUCTORS, INCORPORATED

I hereby tender my resignation as Assistant Treasurer of WALTER KIDDE CONSTRUCTORS, INCORPORATED to take effect at the pleasure of the Board.

Respectfully,

Gordon Henderson

Gordon Henderson

Dated: 2/2/73

To the Board of Directors of

WALTER KIDDE CONSTRUCTORS, INCORPORATED

I hereby tender my resignation as President of WALTER KIDDE CONSTRUCTORS, INCORPORATED to take effect at the pleasure of the Board.

Respectfully,

Roy H. Gordon

Roy H. Gordon

Dated: 2/2/73

2/2/73

To the Board of Directors of

WALTER KIDDE CONSTRUCTORS, INCORPORATED

I hereby tender my resignation as Assistant Secretary of WALTER KIDDE CONSTRUCTORS, INCORPORATED to take effect at the pleasure of the Board.

Respectfully,

Thomas H. Gonser

Dated: 2/2/73

To the Board of Directors of

WALTER KIDDE CONSTRUCTORS, INCORPORATED

I hereby tender my resignation as Vice President of WALTER KIDDE CONSTRUCTORS, INCORPORATED to take effect at the pleasure of the Board.

Respectfully,

John E Clute

John E. Clute

Dated: 2/2/73

The undersigned, LYNN PETT, does hereby resign as Controller of WALTER KIDDE CONSTRUCTORS, INCORPORATED effective immediately.

Dated: April 19, 1973

A. M. KINNEY, INC.
CONSULTING ENGINEERS
2900 VERNON PLACE
CINCINNATI, OHIO
45219

NEW YORK
CHICAGO
DENVER
BASEL

513-751-3934
CABLE-KINPLAN

November 13, 1974

BOISE CASCADE CORP.
RECEIVED
NOV 15 1974
LEGAL DEPARTMENT
T. H. G.

Mr. Thomas H. Gonser
Associate General Counsel
Boise Cascade Corporation
One Jefferson Square
Boise, Idaho 83728

Dear Mr. Gonser:

Enclosed is the Resolution of the Board of Directors of Walter Kidde Constructors, Inc., authorizing you, as an elected Vice President of Walter Kidde Constructors, Inc., to act in its behalf with regard to Kidde contracts for which Boise Cascade Corporation is responsible and under the conditions set forth in the resolution.

With the issuance of this resolution, by the terms of his resignation, Arthur Dornbusch II, is no longer considered by our firm or Walter Kidde Constructors, Inc., to be an officer of Walter Kidde Constructors, Inc.

I look forward to working with you and will, unless otherwise instructed, contact you in connection with matters relating to the Kidde-Boise Cascade relationship.

Yours very truly,

A. M. KINNEY, INC.

J. Mel McKinley

JMM:eam
Enclosure

c: Arthur Dornbusch II

RESOLUTION

RESOLVED, that in view of the agreement by Boise Cascade Corporation to hold this corporation and A. M. Kinney, Inc., an Ohio corporation, harmless from any liability or loss arising from any acts or omissions by Thomas H. Gonser, as a Vice President of this corporation, during his tenure as such Vice President, which agreement was made by Boise Cascade Corporation by letter to said Ohio corporation dated October 28, 1974, and signed by Thomas H. Gonser, as Associate General Counsel and Assistant Secretary of Boise Cascade Corporation, Thomas H. Gonser be, and he hereby is, elected a Vice President of this corporation, to serve as such at the full expense and cost of Boise Cascade Corporation and for so long as necessary for the discharge of all obligations and the pursuit of any rights which this corporation may have in completing the category (a) contracts or in terminating the category (c) contracts referred to in the agreement between Boise Cascade Corporation and said Ohio corporation dated February 2, 1973, and relative to the prosecution and defense of and against the litigation and/or claims referred to in paragraph 11 of said agreement of February 2, 1973, or to serve as such Vice President until such earlier time as Boise Cascade Corporation notifies said Ohio corporation in writing that such tenure may be terminated insofar as the requirements of said agreement of February 2, 1973, are concerned, but not, in any event, under this resolution, to serve as such Vice President beyond October 31, 1975; provided that while the aforenamed Thomas H. Gonser occupies office as such Vice President his authority, powers and duties as such Vice President shall be limited to the matter of discharging the obligations and pursuing the rights of this corporation relative to completing said category (a) contracts and terminating said category (c) contracts, and to the matter of prosecuting and defending against said litigations and/or claims and he shall have no authority or right to act for or on behalf, or as an employee, agent, or representative of, this corporation, or to commit this corporation, or to draw upon any accounts of this corporation, except strictly within the scope of the matters to which his authority is hereinabove limited and as necessary to the exercise of that authority; and further provided that the above mentioned hold harmless agreement set forth in said letter of October 28, 1974, is a condition of the holding of office as such Vice President by the aforenamed Thomas H. Gonser and of his acting as such Vice President and exercising any authority as such Vice President.

I, the undersigned M. L. Ruter, hereby certify that I am Secretary of Walter Kidde Constructors, Inc., a New York corporation, and that the foregoing is a true and correct copy of a resolution adopted by the Board of Directors of Walter Kidde Constructors, Inc., on the 1st day of November 1974.

M. L. Ruter

To the Board of Directors of
Walter Kidde Constructors,
Incorporated:

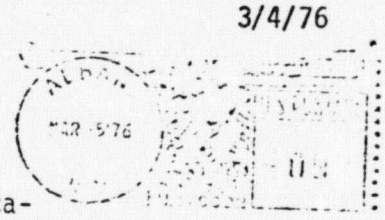
I hereby tender my resignation as Senior Vice President of Walter Kidde Constructors, Incorporated effective December 31, 1973.

Philip A. Sawyer

Exhibit T: Postcard

STATE OF NEW YORK – DEPT. OF STATE
CORPORATIONS BUREAU
ALBANY, N.Y. 12231

3/4/76



WALTER KIDDE CONSTRUCTORS, INC.
assumed its name May 24, 1973, location New York County. No dissolution has been filed.

Hart & Hume, Esqs.
10 East 40th Street
New York, New York 10016

sl

MARIO M. CUOMO
Secretary of State

Affidavit in Opposition by Louis H. Willenken

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

LOUIS H. WILLENKEN, being duly sworn, deposes and says:

1. Deponent is an associate of the firm of Reid & Priest, attorneys for plaintiff Boise Cascade Corporation ("Boise"), and makes this affidavit for the purpose of marshalling the factual basis for the opposition to the instant motion to dismiss for lack of diversity by defendant ("Perkins & Will").

2. The deposition of Arthur Dornbusch II, Esq., former counsel to Boise, was taken concerning the alleged diversity question herein on February 23 and February 26, 1976. A copy of the transcript of said deposition is annexed to the moving papers of Perkins & Will and will be referred to in this affidavit. Pages of said transcript are numbered beginning with page 157. The prior deposition on the merits of Philip A. Sawyer, consultant and employee of Boise, taken January 19, 1976, ending with page 156, will also be referred to in portions in this affidavit.

3. Boise is a Delaware corporation with its principal place of business in Idaho. (Dornbusch transcript page 201; see also Exhibit AD-1 to Dornbusch deposition, page 1, and Certificate of the Secretary of State of Delaware, both annexed hereto as Exhibit I.) Boise had its headquarters in Idaho, where at least 500 persons are employed including the president and vice-presidents of Boise, while the New York office has 12 employees at the most. (Dornbusch transcript pages 163, 267-268.) By

letter dated February 18, 1976 (annexed hereto as Exhibit II) counsel for Perkins & Will acknowledges that no partner of Perkins & Will resides in either Idaho or Delaware.

4. As a result of a merger with Ebasco Industries, Inc. in 1969, Boise became the owner of all outstanding stock of certain engineering and construction companies, including Walter Kidde Constructors, Inc. ("Kidde"). (See Dornbusch transcript pages 162-164, 166-167; see also Exhibit I, supra.) Kidde entered into a contract for construction on the Mount Sinai Hospital of Hartford, Connecticut for which Perkins & Will was the architect. As the construction progressed Kidde incurred extra costs which were caused in some cases by the owner and in some cases by Perkins & Will. (Dornbusch transcript pages 205-208.)

5. By Sale Agreement dated February 2, 1973, Boise sold all of the outstanding stock of Kidde to A. M. Kinney, Inc. ("Kinney"), but Boise retained, under the terms of the February 1973 Sale Agreement, most assets and liabilities of Kidde, including all the rights to and responsibility for claims, expenses and work arising out of the construct project which is the subject of this action. (Dornbusch transcript pages 168-171, 220; see also Exhibit AD-2 to Dornbusch deposition which is the February 1973 Sale Agreement, annexed hereto as Exhibit III.) The February 1973 Sale Agreement states in part:

> "10. Assets and liabilities All assets and liabilities of Kidde, and its subsidiaries, as of time of closing of this sale, shall belong to and be assumed

by [Boise] as of such time of closing except the shares owned by Kidde in other corporations...and except any trade or service marks owned by Kidde, and except as otherwise provided in this Agreement.

11. Claims All existing and future claims by and against Kidde arising out of work performed by Kidde, and/or its subsidiaries, and joint ventures, prior to time of closing of this sale... shall be litigated or arbitrated, or defended against, by [Boise], at its expense in the name of Kidde. [Boise] shall be entitled to all net and after-tax proceeds from said claims and shall be liable to Kidde and [Kinney] for all damages adjudged, decreed, awarded, or assessed against Kidde or [Kinney] in connection with said claims. [Boise] shall hold [Kinney] and Kidde harmless from any loss in connection with said claims and assessments.

12. Unperformed contracts [Kinney] and [Boise] recognize the existence of four categories of wholly or partly unperformed contracts to which Kidde, and/or any of its subsidiaries, is now a party.

(a) Contracts that [Boise] desires Kidde to complete, or cause to be completed for [Boise's] account, namely, Mount Sinai Hospital...

Performance of category (a) contracts to be completed...by Kidde under the project management and control of [Boise]. Continued performance of category (a) and (c) contracts may be accomplished entirely with Kidde personnel or, at the option of [Boise], in part or in whole with employees or agents of [Boise]. [Boise] shall pay to Kidde the actual cost (exclusive of profit) to Kidde of the performance of such contracts at the completion or termination thereof, shall be entitled to all receipts under such contracts, and shall hold [Kinney] and Kidde harmless from any liability or loss arising from breach of such contracts or otherwise arising in connection with such contracts."

6. Boise policy was to use its own name but Boise wanted the right to use Kidde's name because there were contract provisions between Kidde and various owners which prohibited the assignment of construction contracts. (Dornbusch transcript pages 194-195.) The intention of the parties to the February 1973 Sale Agreement was to give Boise the right, not the obligation, to sue in Kidde's name. (Id.)

7. While Kidde did not sign the agreement for the sale of all Kidde stock, there was a resolution of the Board of Directors of Kidde in November 1975 authorizing Thomas H. Gonser, Associate General Counsel and Assistant Secretary of Boise, to act as a Vice President of Kidde at Boise's expense for the purpose of discharging the obligations and pursuing the rights under the February 1973 Sale Agreement (Dornbusch transcripts pages 200-201, 228-229; see also the Resolution of The Board of Directors and the cover letter, both part of Exhibit AD-3 to the Dornbusch deposition, annexed hereto as Exhibit IV).

8. An affidavit of Mr. A. M. Kinney, Jr., Chairman of the Board of Kinney, dated February 16, 1976 is annexed hereto as Exhibit V. He also states that it was the intention of the parties to the February 1973 Sales Agreement that Boise bear all expenses for litigation in Kidde's name, not that Boise be required to litigate in the name of Kidde. In addition, he does not consider the instant suit by Boise to be a violation of the 1973 Sale Agreement and waives any requirement that Boise sue in Kidde's name. Indeed, it is his preference that Boise not use Kidde's name in this litigation.

9. Pursuant to the February 1973 Sale Agreement, the Kidde stock certificates were endorsed and delivered to Kinney (Dornbusch transcript pages 231-233) and all of the Kidde employees for the construction project in question went on the Boise payroll in February 1973 (Sawyer transcript pages 5, 69-70, annexed hereto as Exhibit VI).

10. In March 1973 the Project Superintendent, while on Boise payroll, wrote a letter on Kidde stationery to Perkins & Will protesting the continuing "design as we go" methods of Perkins & Will on the construction project in question (Exhibit AD-6(c) to the Dornbusch deposition, annexed hereto as Exhibit VII and Dornbusch deposition page 268). Perkins & Will understood that they were dealing with Boise as they wrote to Kidde care of Boise after February 1973 (See Exhibit AD-6(f) to the Dornbusch deposition, annexed hereto as Exhibit VIII).

11. A payment requisition in late September 1973 indicates that Perkins & Will was still checking the progress of construction at that time (Exhibit AD-6(d) to the Dornbusch deposition, annexed hereto as Exhibit IX). Although not yet a matter "on the record" in this action, correspondence in the file indicates that Boise considered that the owner terminated the contract in late December 1973.

12. Pursuant to the terms of the 1973 Sale Agreement, Boise received proceeds from a claim arising out of Kidde's work, and Boise paid the taxes on the proceeds (Dornbusch deposition pages 264-265).

13. In an arbitration proceeding, commenced in 1972, wherein Kidde is claiming against the owner and the owner is claiming against Perkins & Will, there was an objection raised to Kidde's status and to one of the arbitrators by the owner and by Perkins & Will. Counsel for Perkins & Will, Joseph A. Bergadano, Esq., admitted during discussion on those objections before the arbitrators that Kidde had no direct claim against Perkins & Will in the arbitration, as follows:

> "MR BERGADANO: May I just clarify one thing for the record so it is clear? The architects are not here as a party against whom any direct claim is being made by Walter Kidde Constructors, Inc. . . . So we will remain here in the sense that we are the party against whom only the owner is making a claim and no claim is being made against us by Kidde." (Transcript of hearings, October 7, 1975)

However, Mr. Bergadano participated in the owner's objection that Kidde was not a valid claimant because Boise was the real party in interest.

14. In his affirmation of October 21, 1975 to the Supreme Court, New York County, concerning the status of Boise in the claim against the owner and the propriety of the arbitrator, Mr. Bergadano refers to the "true party in interest, Boise Cascade." Said affirmation is dated only a few days after deponent's law firm allowed Mr. Bergadano to inspect the February 1973 Sales Agreement. A copy of said affirmation is annexed hereto as Exhibit X. (See pages 3, 5 and 9 of said affirmation.)

15. Based in part upon Mr. Bergadano's affirmation, the court acknowledged that Boise appeared to be the real party in interest and noted that said interest had been disclosed by deponent's law firm at an executive session before the arbitrators and parties prior to arbitration hearings. The court then disqualified the arbitrator upon motion of the owner and Perkins & Will because of a prior contact with Boise.

16. Counsel for Perkins & Will, including Mr. Bergadano, now seek to dismiss the instant action using the reverse argument: that the instant action should have been brought by Kidde, not Boise.

17. There are three of the many incorrect and misleading portions of the moving affidavit of Joseph A. Bergadano, sworn to March 10, 1976, which, it is respectfully submitted, warrant special attention by this court. Those three portions are as follows:

(a) On page 8, in an unnumbered paragraph, the moving affidavit states:

> "Boise was not a party to the construction contract, had no part in any of the construction at the Hospital or the contractor's (Kidde's) claims arising therefrom which presently are in arbitration, the aforesaid arbitration proceedings and the legal proceedings in connection therewith."

In truth, Boise completed the construction from February 2, 1973 and participated in the arbitration, to the knowledge of all parties. As previously explained herein, Perkins & Will dealt with Boise. In addition, annexed hereto as Exhibit XI is

additional correspondence between Boise and the owner, indicating at least that the owner acquiesced in Boise's role on the project.

(b) On page 13, in paragraph 4, the moving affidavit cites language from paragraph 12 of the February 1973 Sale Agreement which indicates that Kidde would complete the Mount Sinai project. However, the complete text of paragraph 12 of the February 1973 Sale Agreement makes clear that Boise has the option to use Kidde or do it itself. (See language quoted in paragraph 5, supra, of this affidavit.) In fact, as previously explained herein, Boise did complete construction itself by using past Kidde employees on the Boise payroll.

(c) On the bottom of page 13, continuing on page 14, of the moving affidavit, there is a quote from the February 1973 Sale Agreement which one might understand to be a Kidde interest in the outcome of the instant claim, as taken out of context by the moving affidavit. However, the beginning of the paragraph from which the quote is taken is omitted from the quote. The beginning of that paragraph makes very clear that the quoted language refers to a different project, and not to the Mount Sinai project which is the subject of the instant claim. As previously explained, Kidde has no interest in the Mount Sinai claim.

18. As more fully explained in the accompanying memorandum of law, Boise is the real party in interest while Kidde has no interest, and diversity depends on the citizenship

of the real parties in interest; the February 1973 Sale Agreement does not require suit in Kidde's name; Perkins & Will cannot claim any benefit from the February 1973 Sale Agreement; any requirement that suit be brought in Kidde's name has been waived by Kinney; and there is diversity between Boise and Perkins & Will.

WHEREFORE, deponent respectfully requests that this instant motion be denied in all respects and that this Court grant such other and further relief as may be just and appropriate.

LOUIS H. WILLENKEN

Exhibit I

AGREEMENT AND PLAN OF MERGER

Between

BOISE CASCADE CORPORATION

A Delaware Corporation
(The Surviving Corporation)

and

EBASCO INDUSTRIES INC.

A New York Corporation
(The Merging Corporation)

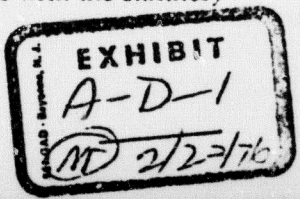
AGREEMENT AND PLAN OF MERGER entered into as of April 24, 1969 by and between BOISE CASCADE CORPORATION, a Delaware corporation (hereinafter sometimes called "Boise Cascade" and sometimes called the "Surviving Corporation"), and EBASCO INDUSTRIES INC., a New York corporation (hereinafter sometimes called "Ebasco" and sometimes called the "Merging Corporation"), which two corporations are hereinafter sometimes called the "Constituent Corporations".

Boise Cascade (which was formed under the name of Boise Payette Lumber Company of Delaware) is validly organized, existing and in good standing under the General Corporation Law of the State of Delaware. Ebasco (which was formed under the name of Electric Bond and Share Company) is validly organized, existing and in good standing under the Business Corporation Law of the State of New York.

Boise Cascade has an authorized capital of 30,000,000 shares of common stock with a par value of $2.50 each, of which on March 31, 1969 17,254,492 shares were issued and outstanding and 531 shares were held in its treasury, and 6,000,000 shares of $1.40 cumulative convertible preferred stock without par value, of which on March 31, 1969 1,757,498 shares were issued and outstanding, 3,000 shares were held in its treasury and 2,914,633 shares were held for cancellation. The number of outstanding shares is subject to changes resulting from conversion of preferred stock and convertible subordinated notes and issuance of shares upon exercise of stock options and pursuant to other commitments. The common stock has one vote per share and the preferred stock has one-half vote per share. Prior to the effective date of the merger provided for herein (hereinafter sometimes called the "statutory merger"), all of the outstanding shares of $1.40 cumulative convertible preferred stock of Boise Cascade will be called for redemption, so that none of such shares will be outstanding on the effective date of the statutory merger.

Ebasco has an authorized capital of 20,000,000 shares of common stock with a par value of $5.00 each, of which on March 31, 1969, 6,665,602 shares were issued and outstanding and 487,803⅓ shares were held in its treasury. The number of outstanding shares is subject to change resulting from issuance of shares upon exercise of stock options. The common stock has one vote per share.

The boards of directors of the Constituent Corporations deem it advisable and in the best interests of their respective corporations and stockholders that Ebasco merge with and into Boise Cascade in accordance with the provisions of the applicable statutes of both the State of Delaware and the State of New York and have entered into an agreement of this date in connection with the statutory merger.



State of Delaware

Office of Secretary of State

I, Eugene Bunting, Secretary of State of the State of Delaware,

do hereby certify that the Certificate of Agreement of Merger of the "EBASCO INDUSTRIES INC.", a corporation organized and existing under the laws of the State of New York, merging with and into the "BOISE CASCADE CORPORATION", a corporation organized and existing under the laws of the State of Delaware, under the name of "BOISE CASCADE CORPORATION", was received and filed in this office the nineteenth day of August, A.D. 1969, at 10 o'clock A.M.;

And I do hereby further certify that the aforesaid Corporation shall be governed by the laws of the State of Delaware.

In Testimony Whereof, I have hereunto set my hand and official seal at Dover this eighth day of October in the year of our Lord one thousand nine hundred and sixty-nine.

Eugene Bunting

Secretary of State

Ass't Secretary of State

FORM 122

Exhibit II
Letter from Counsel for Perkins & Will to Counsel for Boise

BERNSTEIN, WEISS, PARTER, COPLAN & WEINSTEIN

120 EAST 41ST STREET

NEW YORK, N.Y. 10017

TEL. MURRAY HILL 3-2600
CABLE-BEWTHPART

MICHAEL C. BERNSTEIN
GERSON A. WEISS
EUGENE M. PARTER (1948-1969)
NORMAN A. COPLAN
PHILIP WEINSTEIN
CHARLES W. LAKE
JOSEPH E. MC MAHON
LEONORE K. LANGBEIN

GERALD E. DWYER
COUNSEL

February 18, 1976

Reid & Priest, Esqs.
40 Wall Street
New York, New York 10005

Attention: Louis H. Willenken, Esq.

Re: Boise Cascade Corporation -v-
E. Todd Wheeler and The Perkins
& Will Partnership

Dear Mr. Willenken:

This will confirm our conversation whereby I informed you that there is no partner of The Perkins & Will Partnership who is a resident of either Delaware or Idaho, and based upon that statement, the plaintiff is foregoing taking the deposition of The Perkins & Will Partnership on the diversity question.

Pursuant to the direction of Judge MacMahon, we wish to proceed and complete the taking of the deposition of the plaintiff on the diversity issue. We are, therefore, requesting that you provide representatives of the plaintiff for such deposition who have knowledge and/or participated in the sale of Kidde to A.M. Kinney and representatives who are knowledgeable concerning the facts of the acquisition by Boise of Kidde, together with all documents in connection with both transactions. The deposition will be conducted by Mr. Bergadano at his office, 10 East 40th Street, New York, New York. The best days available for us would be either Monday, February 23rd and/or Thursday, February 26th.

Also, according to Judge MacMahon's direction, upon completion of the deposition of the plaintiff, we will promptly determine whether to move for dismissal on the ground of lack of diversity. If we determine not to make such motion, or if we make such motion and upon its determination, we will then arrange with you for the

mutual convenience of both parties to schedule the continuing deposition of the plaintiff and the deposition of The Perkins & Will Partnership.

It is further our understanding that we are reserving all of our rights to object to the production of the documents for inspection and copying which you listed in your notice.

In this connection, it is our further understanding that you will ask for the production of documents in connection with the taking of the deposition of The Perkins & Will Partnership and at such time, we will either make our objection or thereafter produce such documents at the White Plains offices of The Perkins & Will Partnership for your inspection and copying.

I would appreciate your confirming both to the writer and to Mr. Bergadano your agreement with the foregoing.

Very truly yours,

BERNSTEIN, WEISS, PARTER, COPLAN & WEINSTEIN

By: Norman Coplan

NORMAN COPLAN

NC/jm

cc: Hart & Hume, Esqs.
10 East 40th Street
New York, New York
ATTN: Joseph Bergadano, Esq.

Exhibit III to the Affidavit of Louis H. Willenken, Esq. is Included as

Exhibit P to the Affidavit of Joseph A. Bergadano, Esq. at Page 241.

Exhibit IV
Letter from, Resolution of, and Resignation from Kidde

Join Walter Kidde Constructors

A. M. KINNEY, INC.
CONSULTING ENGINEERS
2900 VERNON PLACE
CINCINNATI, OHIO
45219

NEW YORK
CHICAGO
DENVER
BASEL

513-751-3934

CABLE-KINPLAN

November 13, 1974

BOISE CASCADE CORP.
RECEIVED
NOV 15 1974
LEGAL DEPARTMENT
T. H. G.

Mr. Thomas H. Gonser
Associate General Counsel
Boise Cascade Corporation
One Jefferson Square
Boise, Idaho 83728

Dear Mr. Gonser:

Enclosed is the Resolution of the Board of Directors of Walter Kidde Constructors, Inc., authorizing you, as an elected Vice President of Walter Kidde Constructors, Inc., to act in its behalf with regard to Kidde contracts for which Boise Cascade Corporation is responsible and under the conditions set forth in the resolution.

With the issuance of this resolution, by the terms of his resignation, Arthur Dornbusch II, is no longer considered by our firm or Walter Kidde Constructors, Inc., to be an officer of Walter Kidde Constructors, Inc.

I look forward to working with you and will, unless otherwise instructed, contact you in connection with matters relating to the Kidde-Boise Cascade relationship.

Yours very truly,

A. M. KINNEY, INC.

J. Mel McKinley

JMM:eam
Enclosure

c: Arthur Dornbusch II

RESOLUTION

RESOLVED, that in view of the agreement by Boise Cascade Corporation to hold this corporation and A. M. Kinney, Inc., an Ohio corporation, harmless from any liability or loss arising from any acts or omissions by Thomas H. Gonser, as a Vice President of this corporation, during his tenure as such Vice President, which agreement was made by Boise Cascade Corporation by letter to said Ohio corporation dated October 28, 1974, and signed by Thomas H. Gonser, as Associate General Counsel and Assistant Secretary of Boise Cascade Corporation, Thomas H. Gonser be, and he hereby is, elected a Vice President of this corporation, to serve as such at the full expense and cost of Boise Cascade Corporation and for so long as necessary for the discharge of all obligations and the pursuit of any rights which this corporation may have in completing the category (a) contracts or in terminating the category (c) contracts referred to in the agreement between Boise Cascade Corporation and said Ohio corporation dated February 2, 1973, and relative to the prosecution and defense of and against the litigation and/or claims referred to in paragraph 11 of said agreement of February 2, 1973, or to serve as such Vice President until such earlier time as Boise Cascade Corporation notifies said Ohio corporation in writing that such tenure may be terminated insofar as the requirements of said agreement of February 2, 1973, are concerned, but not, in any event, under this resolution, to serve as such Vice President beyond October 31, 1975; provided that while the aforenamed Thomas H. Gonser occupies office as such Vice President his authority, powers and duties as such Vice President shall be limited to the matter of discharging the obligations and pursuing the rights of this corporation relative to completing said category (a) contracts and terminating said category (c) contracts, and to the matter of prosecuting and defending against said litigations and/or claims and he shall have no authority or right to act for or on behalf, or as an employee, agent, or representative of, this corporation, or to commit this corporation, or to draw upon any accounts of this corporation, except strictly within the scope of the matters to which his authority is hereinabove limited and as necessary to the exercise of that authority; and further provided that the above mentioned hold harmless agreement set forth in said letter of October 28, 1974, is a condition of the holding of office as such Vice President by the aforenamed Thomas H. Gonser and of his acting as such Vice President and exercising any authority as such Vice President.

I, the undersigned M. L. Ruter, hereby certify that I am Secretary of Walter Kidde Constructors, Inc., a New York corporation, and that the foregoing is a true and correct copy of a resolution adopted by the Board of Directors of Walter Kidde Constructors, Inc., on the 1st day of November 1974.

M. L. Ruter

To the Board of Directors of
Walter Kidde Constructors,
Incorporated:

I hereby tender my resignation as Senior Vice President of Walter Kidde Constructors, Incorporated effective December 31, 1973.

Philip A. Sawyer

Exhibit V: Affidavit by A. M. Kinney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - -

BOISE CASCADE CORPORATION, :

Plaintiff, : 75 Civ. 6072 (LFM)

v. :

E. TODD WHEELER AND THE PERKINS AND WILL PARTNERSHIP, : AFFIDAVIT

Defendant.

- - - - - - - - - - - - - - - - - -

STATE OF OHIO)
) ss.:
COUNTY OF HAMILTON)

A. M. KINNEY, JR., being duly sworn, hereby deposes and says:

1. Deponent is Chairman of the Board of A. M. Kinney, Inc., an Ohio corporation, and is familiar with the negotiation of the Sale Agreement dated February 2, 1973, between Boise Cascade Corporation ("Boise") and said A. M. Kinney, Inc., ("Kinney") for sale of the stock of Walter Kidde Constructors, Incorporated ("Kidde"). A copy of the Sale Agreement is annexed hereto as Exhibit A hereof.

2. Paragraph 11 of the Sale Agreement provides, in part, as follows:

> "All existing and future claims by and against Kidde (within certain categories, hereinafter referred to as 'those categories')....shall be litigated or arbitrated, or defended against, by (Boise), at its expense, in the name of Kidde. ...." (Underscoring added)

3. At the time the Sale Agreement was executed there existed pending and threatened litigation and arbitration of claims by and against Kidde within those categories.

4. At the time the Sale Agreement was executed Kinney was concerned that Boise bear all expenses with respect to such litigation, arbitration, and defense. Kinney did not intend that said paragraph require that Boise litigate claims in the name of Kidde.

5. Kinney hereby waives, on behalf of itself and Kidde, any right it may have to require Boise to litigate or arbitrate in the name of Kidde the claims alleged by Boise in the above captioned action.

6. Kinney became aware of the filing of the above captioned action early in December 1975 through an article in the Wall Street Journal. Kinney does not consider the filing of suit by Boise in its own name upon the claims alleged by Boise in the above captioned action to be a violation of the Sale Agreement.

7. In fact, Kinney, as Kidde's present owner, would prefer that Boise not use Kidde's name in connection with litigation or arbitration of the claims alleged by Boise in the above captioned action, and it is not in Kinney's or Kidde's interest for Kidde's name to be brought into litigation or arbitration thereof.

A. M. Kinney, Jr.

Subscribed and sworn before me this 16th day of February 1976

Notary Public

J. M. McKINLEY
Notary Public, State of Ohio
My Commission has no expiration date

Exhibit VI: Selected Pages of the Deposition of P. A. Sawyer

(Pending question was read back by the reporter)

A (Continuing) Since January 1, 1974.

Q Did you have any connection with Boise prior to January 1, 1974?

A Yes, I was a direct employee.

Q You were a direct employee?

A Yes.

Q In what capacity, sir?

A From --

Q First, if it will be helpful for you, how long were you a direct employee of Boise?

A For a period of -- there is a technical point here that I'm trying to determine. I don't remember the exact dates involved, but a point somewhere in the February time of 1973, I was transferred from a Walter Kidde Constructors, Inc., payroll, to a Boise Cascade payroll, because of the technical sale of the firm of Walter Kidde Constructors.

Q When you say the technical sale of the firm, you are speaking of sale of stock or sale of assets or what?

A Well, it was a stock sale.

Q You say some time prior to February of '73, I believe you said?

A Not necessarily prior to some time, around February.

Kidde Constructors --

Q Prior to the completion of the job?

A Prior to the completion of the job.

Q Do you know where he is today?

A No.

Q How about Konrad Mueller?

A Yes.

Q Was he connected with Walter Kidde to the end of the job, or with Boise Cascade?

A He was connected with Walter Kidde, if you will. Walter Kidde/Boise, because I think he actually went over on a Boise payroll, if not until the very end, very close to the very end.

Q Is he still connected in any way with Boise Cascade?

A No.

Q Do you know where he is?

A Yes.

Q Can you tell us, please?

A He makes his residence in -- a town in New Jersey, and I have his address at home.

MR. BERGADANO: Could you get that information and give it to us the next time?

MR. WILLENKEN: Sure.

Q How about Arne Johnson? Did he remain on

the job to the end?

A Yes.

Q I take it, then, he went on a Boise payroll after a certain point?

A Yes, everybody did. There was a period in early '73 and I can't tell you the exact point, and I can't even be positive, because it was an accounting function that, you know, it was just an automatic thing, that at a certain point, they were paid through a different bank. But other than that --

MR. BERGADANO: Just for the record, Mr. Willenken, can you provide the information the next time as to when these various people we have been talking about, who did go from Walter Kidde payrolls to Boise Cascade payrolls, when that transition took place, so we will have that clear on the record?

MR. WILLENKEN: To the extent we have it. I assume we have it.

MR. BERGADANO: I assume Boise has payroll records, and that's what I want to know. And how long they remained with Boise after they went over to the Boise payroll. And whether any of them are still at the present time connected with Boise, either as consultants or otherwise.

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Exhibit VII:
Letter from Boise in Kidde's name to Perkins & Will

ONE PENN PLAZA, NEW YORK, N.Y. 10001
Walter KIDDE CONSTRUCTORS Incorporated.
Reply to: P.O.Box 12175
Blue Hills Station
Hartford, Conn. 06112

315

March 12,1973

Mr. Edward W.Gay
E.Todd Wheeler and
The Perkins & Will Partnership
445 Hamilton Avenue
White Plains, New York 10601

RE: Mt. Sinai Hospital
Hartford, Conn.

Dear Sir:

In response to your letter of February 21,1973, I question the reasoning of the architect for not recognizing the need for revised drawings when changes are made.

Although the electrical foreman has been proceeding upon oral directions and on a design as we go basis, drawings indicating changes are required for the following reasons:

1. Drawings are referred to by other trades.
2. Scheduling of manpower
3. Ordering materials.
4. For record purposes.
5. As a basis for compiling "as built" drawings.
6. To avoid errors in design.
7. To prevent possible violations of codes.
8. To avoid omissions.
9. To avoid further misunderstandings.
10. Contract requirements.

The refusal by the Architect to issue revised drawings recording changes indicates to me neglect of his obligations under the contract and/or an information gap between the Architect and the Owner.

Very truly yours,
Walter Kidde Constructors, Inc.

L.Emil Hansen, Jr.
Superintendent

LEH,jr/ab
cc: Dr. I.Geetter
Mr.John Lodes
Mr.Ginsberg
File

EXHIBIT
ADB(c)(v)
Feb 26-76

Designers, Engineers and Builders

Exhibit VIII:
Letters from Perkins & Will to Kidde c/o Boise

Perkins & Will

October 11, 1973

Walter Kidde Constructors, Inc.
c/o Boise Cascade Co.
345 Park Avenue
New York, New York 10022

Re: Mount Sinai Hospital
Hartford, Connecticut

Gentlemen:

On October 2nd and 3rd an inspection of the project by representatives of our office and our consulting engineers was made to review your claim that all punch list work was complete. This inspection proved without doubt that your firm's claim was completely without merit. Deficient work dating back two years was found to be unresolved as was better than 90% of the remaining punch list items.

This communication is to advise your firm that we will not recommend to the Hospital any reduction in retention until all punch list items are satisfactorily completed and approved.

Very truly yours,

E. TODD WHEELER and
THE PERKINS & WILL PARTNERSHIP

John B Lodes

John B. Lodes

JBL/ct

cc: E. Gay
J. Lodes
File

EXHIBIT
AD-6 (W)
Feb 26-76

Perkins & Will

October 24, 1973

Walter Kidde Constructors, Inc.
c/o Boise Cascade Company
345 Park Avenue
New York, New York 10022

Attention: Mr. Phillip Sawyer

Re: Major Corrective Work
Mount Sinai Hospital
RE: Hartford, Connecticut

Gentlemen:

This letter is to alert your office that immediate attention should be given to complete the following major corrective work:

1. Pack pipe sleeves through walls, exterior to interior areas.
2. Brick up wall voids, Penthouse East Wing.
3. Install insulation on exposed piping in Penthouse.
4. Rake out and recaulk all joints related to terra cotta coping tiles and concrete wall joints.
5. Repair all roof leaks throughout roof areas of stairtowers (West Wing).
6. Repair all cracked handrailings at front entrance of Hospital.
7. Storm water leakage in storage room. (Requested in letter dated September 27, 1973).
8. Water seepage through expansion joint (West wall) column line A2 and A1 (Letter dated September 27, 1973).

We wish to state that this office has again taken exception to your Mr. Hansen's marking up the Architectural Punch List as being completed, when the work has not been completed.

Herewith, please find a copy of the Field Observation Report from Syska & Hennessy, Inc., related to incomplete work throughout the project.

Very truly yours,
E. TODD WHEELER and THE PERKINS & WILL PARTNERSHIP

Edward W. Gay

EWG/js
enclosure

cc: Dr. Isidore S. Geetter
Mr. John B. Lodes

NEW ADDRESS
345 PARK AVENUE
NEW YORK, N. Y. 10022

Walter Kidde Constructors Incorporated

19 Rector Street
New York, New York 10006
212/425-3030

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Exhibit IX:
Letter from Boise in Kidde's Name
to Perkins & Will

September 25, 1973

E. Todd Wheeler and
The Perkins and Will Partnership
445 Hamilton Avenue
White Plains, New York 10601

Re: Payment Request No. 54 - Mt. Sinai Hospital

Gentlemen:

We respectfully request payment in the amount of $10,232.10 for work completed on the above project through the month of August 1973, per breakdown below:

Work Completed	$13,925,695.42
Less Retention	1,392,569.54
	12,533,125.88
Less Previously Billed	12,522,893.78
	$ 10,232.10

"We hereby certify that the accompanying payment request is a true and correct statement, and that all bills for Labor and Material Suppliers as of the payment request dated May 25, 1973, have been paid."

Very truly yours,
Walter KIDDE CONSTRUCTORS Inc.

H. Marcus

H. Marcus
Assistant Controller

PROG. CHECKED 9-28-73 DATE
BY: E.W Gay FIELD SUPT
PAYMENT APPROVED 10/1/73 DATE
THE PERKINS & WILL PARTNERSHIP ARCHITECTS
BY

State of New York)
) SS
County of New York)

Subscribed and sworn to before me this
25th day of September 1973.

Arthur A. Doanbusch II

ARTHUR A. DOANBUSCH II
NOTARY PUBLIC, State of New York
No. 41-1000500
Qualified in Queens County
Commission Expires March 30, 1975

EXHIBIT
D-6(a)
Feb 26-76

Exhibit X:
Affirmation of Joseph A. Bergadano, Esq.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----------x

THE MOUNT SINAI HOSPITAL OF HARTFORD, CONNECTICUT and STATE OF CONNECTICUT HEALTH AND EDUCATION FACILITIES AUTHORITY (ASSIGNEE),

Petitioners,

-against-

WALTER KIDDE CONSTRUCTORS, INC. and E. TODD WHEELER and THE PERKINS AND WILL PARTNERSHIP, and THE AMERICAN ARBITRATION ASSOCIATION,

Respondents.

----------x

Index No.: 16122/72

AFFIRMATION IN SUPPORT OF MOTION TO DISQUALIFY AND REMOVE ARBITRATOR

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

JOSEPH A. BERGADANO, an attorney at law duly admitted to practice before the Courts of the State of New York, affirms the following to be true under the penalties of perjury:

I am a member of the firm of Hart & Hume, the attorneys of record for Respondents E. Todd Wheeler and The Perkins & Will Partnership ("the Architects") in the above-captioned proceeding. I make and respectfully submit this affirmation in support of and to join in the motion by the Petitioners herein ("the Hospital") for an order disqualifying and removing Mr. James Birdsall, one of the arbitrators in a pending arbitration proceeding commenced by Respondent Walter Kidde Constructors, Inc. ("Kidde") against the Hospital, to which the Architects have been made a party as a

result of the consolidation of an arbitration proceeding commenced by the Hospital against the Architects with the Kidde-Hospital arbitration.

The arbitration involves 113 claims and areas of claims by Kidde against the Hospital for which the Hospital is, in turn, making claim over against the Architects. Kidde's claims total more than $9.6 million, without interest. With interest those claims exceed $10 million.

Because the parties were unable to agree on arbitrators, three (3) arbitrators were appointed by the American Arbitration Association ("the Association"). One of those arbitrators was and is Mr. James Birdsall, a resident of the State of New Jersey.

The actual hearings in the arbitration commenced on September 9, 1975. There only have been four hearings to date, on September 9, 10 and October 7 and 8, 1975.

The arbitration is in its very earliest stages. Kidde has not yet presented any evidence as to any of its claims.

Kidde's first witness, whom Kidde's counsel has stated is only being presented by them for "background" information, is still "on the stand", being cross-examined by the Hospital's counsel. That cross-examination has not yet been completed and the Architects' cross-examination of that witness has not yet started.

At the hearing which was held on October 7, 1975, Kidde's counsel admitted on the record that despite the fact that the claims are being made in the name of Kidde, Kidde has been liquidated and the real party in interest as respects those claims is the Boise Cascade Company.

As shown by the moving papers herein, when that fact was revealed by Kidde's counsel at the hearing, Mr. Birdsall informed all parties, on the record, that since the name of Boise Cascade had come up, he felt he should inform all of the parties and counsel that he previously had been retained as a consultant by Boise Cascade on two occasions. Counsel for both the Hospital and the Architects thereupon reserved their respective client's rights to make any objection to Mr. Birdsall continuing as an arbitrator after consultation with their respective clients. A copy of the pertinent portion of the minutes of that proceeding with regard to the foregoing is annexed hereto marked "Exhibit A".

At the beginning of the hearing held on October 8, 1975, the Hospital's counsel made a formal objection, on the record, on behalf of the Hospital to Mr. Birdsall continuing as an arbitrator and submitted a letter setting forth the Hospital's objection. As counsel for the Architects, I joined in the Hospital's objection to Mr. Birdsall on behalf of the Architects. In addition, I stated on the record that we were still proceeding under protest so far as the Architects were concerned, reserving all of the Architects' rights and waiving none of those rights,

both on the basis that I had set forth on the record the day before and in prior proceedings. Copies of the pertinent portion of the Minutes of the arbitration proceedings on October 8, 1975 are annexed hereto, marked "Exhibit B".

The next day, October 9, 1975, I sent to the Association my letter of that date (with copies to counsel for Kidde and the Hospital, respectively) reaffirming the Architects' position. A copy of that letter is annexed as "Exhibit 6" to the moving papers on the instant motion.

Thereafter, the Association sent a letter dated October 14, 1975 to Counsel for the respective parties, a copy of which letter is annexed hereto, marked "Exhibit C".

In that letter the Association made certain statements as to Mr. Birdsall's alleged involvement with Boise Cascade, none of which had been stated by Mr. Birdsall in his statement to the parties and their respective counsel at the hearing of October 7. Since that information obviously had been obtained on an ex-parte basis by the Association without any opportunity to the parties or their respective counsel to make any inquiry with respect to the statements made by the Association in its said letter, on October 15, 1975, I sent my letter of that date to the Association, a copy of which is annexed as "Exhibit 7" to the moving papers herein.

On Friday, October 17, 1975, we received a copy of the Association's letter dated October 16, 1975 in which the Associati

ted that they had determined to reaffirm the appointment of Mr. Birdsall as one of the arbitrators. A copy of that letter is annexed hereto, marked "Exhibit D".

As can be seen from the foregoing, the matter involved in the arbitration is an extremely serious one, involving claims by what has now been revealed to be Boise Cascade of more than $10 million. There are 10 attorneys involved in the hearings, three (3) (a partner and two associates) on behalf of Boise Cascade (previously Kidde); two (2) (a partner and an associate) on behalf of the Hospital; myself and an associate as well as the Architects' personal counsel on behalf of the Architects; and two (2) attorneys from two separate law firms on behalf of two engineering firms, who are attending the hearings as "observers" on behalf of their respective firms and clients, who were the Architects' engineering consultants in connection with the construction job involved.

In addition, there are the three arbitrators (who are to be conpensated at the rate of $200 per man per day) the reporter, the Association's Tribunal Administrator, the Executive Director of the Hospital, a member of the Architects' firm and such additional witnesses and persons as counsel for the now-revealed true party in interest, Boise Cascade, have been attending at the hearings.

It is my estimate that each hearing costs the parties between $5,000 and $10,000 for counsel fees, the cost of the

transcript, the arbitrators' compensation and the Association's fees.

I also estimate that based on the hearings to date, the voluminous number and complexity of the claims being made by Boise Cascade as well as prior experience in arbitration of claims arising out of construction that the present matter probably will require well in excess of 100 hearings which will probably require more than a year to complete. Consequently, the cost of the arbitration to the respective parties will be substantial, if not enormous.

In view of the facts, the seriousness of the matters involved, the enormous expense which will be involved to all of the parties and particularly since the arbitration is in its very beginning stage (counsel for Boise Cascade not yet having presented any evidence on any of the 113 claims and areas of claims), it is respectfully submitted that there should be no question of any taint of any kind in either the arbitration proceedings or of any arbitrator who is to render a decision and award in those proceedings. It would be a terrible thing for all of the parties involved to go through the lengthy hearings yet to come at enormous expense with a "cloud" hanging over the entire matter which might cause the arbitrators' ultimate award to be set aside after such lengthy proceedings and expense due to the fact that one of the arbitrators had previously been involved with what has now been revealed to be the true party in interest, Boise Cascade.

In that connection, I respectfully advise this Court that in all of the voluminous litigation which there has been in connection with various aspects of this matter, counsel for Boise Cascade have never revealed to any of the Courts and Justices thereof that Kidde was liquidated several years ago and that Boise Cascade has been and is the real party in interest with regard to the claims of more than $10 million which are being made against the Hospital.

I further respectfully advise the Court that none of the arbitrators are lawyers. They are all men involved in various phases of design and construction of buildings, etc. And, as the Court knows, they are not bound by any rules of law or evidence and are the final judge and jury from whose award there is no appeal. Consequently, and particularly in a matter involving more than $10 million, it is respectfully submitted that there should not even be the remotest suspicion of anything which might taint the arbitrators' award.

As the Court said in Matter of Friedman, 215 App. Div. 130 (at page 136), 213 N.Y.S. 369 (at page 375):

> "During recent years arbitration has been more and more resorted to for the settlement of business controversies. It therefore becomes of the utmost importance that in statutory proceedings of character, where the rights of parties are adjudicated not by trained lawyers and judges, but by fellow businessmen, every safeguard possible should be thrown about the proceeding to insure the utmost fairness and impartiality of those charged with the determination of the rights of the parties. Nothing should be

permitted to throw suspicion even upon the entire impartiality of arbitrators. The finality of an award of arbitrators, as compared with the reviewable decision of a judge or referee, makes this all the more important, and that the tribunal is to pass upon the rights of the parties be not subject to the slightest suspicion as to its fairness." (Emphasis Supplied)

As the Court also said in Knickerbocker Textile Corp. v. Sheila-Lynn, Inc., 172 Misc. 1015, 16 N.Y.S.2d 435 (Sup. N.Y. 1939), at page 440 of the 16 N.Y.S.2d report:

"That arbitrators are judicial officers and are bound by the same rules as govern such offices, is expressed in Matter of Friedman, supra., ... as follows: 'The law is well settled that arbitrators exercise judicial functions, and, while not eo nomine judges, they are in fact judicial officers, and bound by the same rules as govern such officers ...'"

The Court went on to say at page 441 in quoting from another case, but on the same general subject:

"The real question here was not whether the referee was guilty of actual corruption, but whether the fairness of his decision was justly questioned. It is the settled law of this state that any indiscreet action of a referee, from which improper inferences can be drawn, suffices to set aside his report." (Emphasis in original)

The Court also went on to state:

"The interests of justice demand that the general rules designed to prevent the suspicion of impurity in its administration [the administartion of justice] should be rigidly adhered to. ... A referee, ... owes it to himself, not only to avoid all improper influences, but even 'the appearance of evil' ... The fact that the referee is a man of high character and unquestioned integrity should not be allowed influence the determination of that question; for it is essential to the administration of justice that even the appearance of evil should be avoided, and, where a man who accepts the position of referee has such relations with one of the parties to the litigation as to make it improper that he should decide the

> questions submitted to him, his character is not at all material, and the Court will enforce that rule against a man of high character as well as against one whose character is not so good."
> (Emphasis in original)

In the instant case, we have an admission by one of the arbitrators that he previously had business relations and had been retained by Boise Cascade who, it has now been revealed in the arbitration proceedings by their counsel, is the real party of interest. In view of the hugh claims being made by and on behalf of Boise Cascade; the fact that the arbitration proceedings are at their very beginning with no testimony or evidence yet on any of Boise Cascade's 113 claims; that only one (1) witness has so far testified and his testimony is not yet completed; that that wi ' testimony is not on any of the 113 claims but only on background matters; that the full arbitration probably will require in excess of 100 hearings at enormous expense to each and all of the parties involved; it is respectfully submitted that since Mr. Birdsall, one of the arbitrators who is to decide the matter has revealed that he had prior business dealings with the claimant in such an arbitration, that arbitrator should be removed at this time in the interests of all of the parties so that the enormous effort and expense which will be entailed in the full arbitration will not be jeopardized or wasted because of a possible taint of the proceedings and the arbitrators' award resulting from one of the arbitrators' prior business dealings with the actual claimant, Boise Cascade.

If a referee, whose findings and report are subject to review by the courts must be beyond even the remotest suspicion of improper influence, partiality or fairness, it is respectfully submitted that an arbitrator, who is both judge and jury, must be subject to at least that standard, if not a higher standard. Accordingly, it is respectfully submitted that in view of all of the circumstances and the facts of this matter, as well as the applicable law, the instant motion should be granted and Mr. James Birdsall disqualified and removed as one of the arbitrators who is to hear and determine the pending arbitration.

Dated: New York, N. Y.
October 21, 1975

Joseph A. Bergadano

JOSEPH A. BERGADANO

Exhibit XI:
Correspondence between Boise and the Owner

One Jefferson Square
Boise, Idaho 83728
208/384-7380

Thomas H. Gonser
Associate General Counsel
and Assistant Secretary

Boise Cascade Corporation

June 3, 1975

Dr. Isadore Geeter
Mt. Sinai Hospital
500 Blue Hills Avenue
Hartford, Connecticut 06112

Dear Dr. Geeter:

On behalf of Mr. Orndorff and me I would like to thank you for arranging our meeting in Hartford last week. Our discussions with Messrs. Savan and Ellis were useful, and the opportunity to tour the Hospital was greatly appreciated.

While our substantive discussions indicated that our positions are apparently far apart at this time, I would hope that we now at least have established a potentially constructive means of communication between the decision levels of the Hospital and Boise.

During the course of our discussions, I offered to make available to your representatives the basis of our claim, so that it could be evaluated prior to entering arbitration. Obviously there are strategic constraints which impose some limitations but I was hopeful that such a session could be productive. Specifically, I suggested that our consulting engineers meet with your consulting engineers for this purpose.

This suggestion was at least temporarily tabled by Messrs. Savan and Ellis.

Mr. Ellis suggested in the alternative that trial counsel should meet to discuss the possibility of disposing of the claim short of litigation. While past history does not give me a great deal of confidence in the potential productivity of such a meeting, I have instructed our trial counsel to respond affirmatively to any such

EXHIBIT G

request from the Hospital's trial counsel. If such a meeting is scheduled, I would like to be present, and I would invite the presence of a business representative of the Hospital.

Again, thank you for your many courtesies.

Very truly yours,

Thomas H. Gonser
Associate General Counsel

THG:ss

cc: William J. O'Donnell,
Reid & Priest

bcc note to Wm O'Donnell -- I think this puts the ball clearly in their court. If their counsel does call, the meeting may well have to be in Boise, on the West Coast or (possibly) a halfway point... such as Chicago. Please keep me posted

THG

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500 Blue Hills Avenue
Hartford
Connecticut 06112
(203) 242-4431

June 10, 1975

Mr. Thomas H. Gonser
Associate General Counsel
and Assistant Secretary
Boise Cascade Corporation
One Jefferson Square
Boise, Idaho 83728

Dear Mr. Gonser:

Sincere thanks for your communication of June 3, 1975 summarizing briefly the nature of the discussions that took place at the Hospital on May 29th. I have shared a photocopy of your letter with Messrs. Savin, Ellis, Reiss and Bruner.

As a follow-up to Mr. Ellis's suggestion at the May 29th meeting that trial counsel should meet, and your statement in the June 3rd letter that you have instructed your trial counsel thereto, I respectfully suggest that you initiate such a request with the given assurance that it will be honored by the Hospital's trial counsel.

Very truly yours,

I. S. Geetter, M.D.

ISG·PK

BOISE CASCADE
RECEIVED
JUN 13 1975
LEGAL DEPARTMENT
T. H. G.

EXHIBIT H

Reply Affidavit in Support of Motion to Dismiss

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

JOSEPH A. BERGADANO, being duly sworn, deposes and says:

I am a member of the firm of Hart & Hume, one of the attorneys for the defendant architects in the above-captioned action. I make and respectfully submit this affidavit in reply to the statements made in the opposing affidavit of Louis H. Willenken, sworn to March 11, 1976 on the instant motion. I will not endeavor to respond to every single unsupported or erroneous statement made in opposition to the instant motion, but will limit myself to those which are pertinent to this motion.

Mr. Willenken and the plaintiff would have this Court completely ignore the fact that Boise and Kidde at all times were and still are totally separate corporations, with separate entities and separate officers and directors. They would also have this Court believe that Boise is the "real party in interest", without any interest remaining in Kidde despite the documented facts. However, less than six months ago Mr. Willenken submitted an affidavit sworn to October 21, 1975 to the Appellate Division, First Department in which he stated to that Court (and, subsequently, to the Supreme Court, New York County) that Boise was "...a company which has an indirect interest in the outcome of the case...". A copy of the pertinent portions of that affidavit and of Mr. Willenken's signature are annexed hereto marked "Exhibit U". That statement is found at the top of page "2" of that affidavit.

The plaintiff also would have this Court believe that Kidde somehow was bound by the agreement between Boise and Kinney and somehow acquired Kidde's rights to prosecute any claims which Kidde had arising out of the construction work for the Hospital. Once again, however, in his affidavit to the Appellate Division annexed hereto, he stated in the paragraph numbered "6" on page "3" as follows:

> "6. Kidde was not a party to the sale agreement between Boise and Kinney and made no assignment to anyone of its claim against the Hospital. Under the terms of the sale agreement, the relationship between Kidde and the Hospital remained untouched." (Exhibit U annexed)

On that same motion before the Appellate Division and the further motion then pending before the Supreme Court, New York County, the plaintiff also submitted an affidavit of one Will M. Storey, Boise's Senior Vice President, sworn to October 15, 1975, a copy of which is annexed hereto marked "Exhibit V". In that affidavit Mr. Storey states, in part, in the paragraph numbered "11" on page "5":

> "The claimant [Kidde] is still the same viable legal entity that entered into the contract with the Hospital and is still engaged in construction work."

He further states on page "7" in the paragraph numbered "15" of that same affidavit:

> "There has been no assignment by Kidde of its construction contract with the Hospital. On the contrary, said agreement specifically provides that Kidde would, after its stock was acquired by Kinney, continue and complete the hospital project. This was performed by Kidde and the construction completed in July,

1973. The transaction between Boise and Kinney was simply and solely a sale of corporate stock by one parent corporation to another."

The plaintiff would also have it believed that I made the representation that Boise was the "real party in interest" (Exhibit X to opposing affidavit allegedly in support of that allegation). As the Court will note the statement which I made (at the top of page "3" of that affirmation) was:

> "At the hearing which was held on October 7, 1975 Kidde's counsel admitted on the record that despite the fact that the claims are being made in the name of Kidde, Kidde has been liquidated and the real party in interest as respects those claims is the Boise Cascade Company."

That statement was based upon a representation by William J. O'Donnell, Esq., a partner in the firm representing both Boise in this action and Kidde in the Kidde-Hospital-Architects arbitration made on the record of the hearings held in the arbitration proceedings on October 7, 1975 and October 8, 1975, the pertinent portions of the transcripts of which are annexed hereto marked, respectively, "Exhibit W" and "Exhibit X".

As the Court will note, on page "74" of the transcript of the hearing held on October 7, 1975, Mr. O'Donnell stated (on lines 13-16):

> "...Kidde was liquidated, not sold. The assets and liabilities of Walter Kidde Constructors were taken down by its parent company, Boise Cascade Corporation."

On the following day, October 8, 1975 Mr. O'Donnell again confirmed that he had stated that Kidde had been liquidated. (The name "Boise" on page 5, line 24 is erroneous. It should read "Kidde".)

On page 6 of the same transcript Mr. O'Donnell an able and experienced lawyer, made the legal distinction between "liquidated" and "dissolved" as respects Kidde (lines 14, 15, page 6, Exhibit X).

The plaintiff would also have it appear that the Supreme Court, New York County made some finding to the effect that Boise was the "real party in interest" as respects Kidde's claims. There was no such finding either of fact nor conclusion of law, nor does or can the plaintiff produce any decision supporting that allegation.

As can be seen from the above and the annexed exhibits, the plaintiff, both by its counsel and its officer have made diametrically opposed representations and statements to the Appellate Division, First Department and the Supreme Court, New York County, on the one hand, and this Court, on the other, as to Kidde's ownership and retention of its claims arising out of the Hospital construction. It is respectfully submitted that the facts are that Kidde at all times was and remained a completely separate entity which retained its own claims, which were never assigned to Boise.

The opposing affidavit also makes various completely unsupported statements and conclusions (and those only by

counsel, not by Boise or Kidde) concerning Boise's "policy"; that "...Boise retained...most of the assets and liabilities of Kidde..."; the alleged "intention of the parties to the agreement between Boise and Kinney; etc. In addition, an affidavit is submitted by Mr. Kinney as to the alleged intention of the parties, etc. I respectfully point out to the Court that aside from Mr. Kinney's and Boise's counsel's statements, there are no documents supporting those allegations, no resolutions of the Board of Directors of Kidde, Boise or Kinney supporting those statements, nor any other document of legal effect.

It is also alleged that various of Kidde's employees went on Boise's payroll, once again without any supporting documents, and that the architects allegedly dealt with Boise. We respectfully direct the Court's attention to the fact that all of the correspondence before this Court is either on Kidde's stationery or directed to Kidde, not Boise.

The opposing affidavit, in paragraph "12" also states that:

> "...Boise received proceeds from a claim arising out of Kidde's work, and Boise paid the taxes on the proceeds..." (Emphasis supplied)

The transcript referred to clearly shows that such alleged transaction has nothing whatsoever to do with the claims involved in the instant case which are the same claims which are involved in the pending Kidde-Hospital-Architects arbitration.

We respectfully submit the documented facts fully prove that Kidde, a New York corporation, is an indispensable party to the instant action and that the necessary joinder of Kidde as an indispensable party plaintiff herein ousts the jurisdiction of this Court in this action which is based upon alleged diversity of citizenship between the plaintiff and the defendants. We further respectfully submit that it has been fully demonstrated (and not denied in any respect) that upon the facts before this Court complete relief cannot be afforded to those already parties to this action in the absence of Kidde; that as a practical matter a decision in this action will effect or impair and impede Kidde's rights and interests; and that, in view of the pending arbitration proceeding to which the architects are, in effect, a third-party defendant as respects Kidde's claims which are essentially the same claims being made in this action, the defendants herein will be subjected to a substantial risk of incurring double, multiple or otherwise inconsistent obligations by reason of Kidde's patent interest in those claims which are now being asserted by Boise in this action.

Accordingly, it is respectfully submitted that on the facts and the applicable law the instant motion to dismiss this action should and must be granted in all respects.

JOSEPH A. BERGADANO

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Rec'd in App. Div. Clerk's Office 10/21/75 JPS

Exhibit U:
Affidavit by Louis H. Willenken, Esq.

SUPREME COURT OF THE STATE OF NEW YORK

APPELLATE DIVISION - FIRST DEPARTMENT

In the Matter of the Arbitration Between WALTER KIDDE CONSTRUCTORS, INC., Claimant, -and- THE MOUNT SINAI HOSPITAL OF HARTFORD, CONNECTICUT and STATE OF CONNECTICUT HEALTH AND EDUCATION FACILITIES AUTHORITY, Respondents, -and- E. TODD WHEELER and THE PERKINS & WILL PARTNERSHIP, Respondents.	AFFIDAVIT IN SUPPORT OF MOTION TO VACATE TEMPORARY STAY OF ARBITRATION Index Nos. 7335/72; 16122/72; 9281/75; 7803/75 8556/75

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

LOUIS H. WILLENKEN, being duly sworn, deposes and says:

1. Deponent is an associate of the firm of Reid & Priest, attorneys for claimant Walter Kidde Constructors, Inc. ("Kidde") and makes this affidavit in support of the instant motion to vacate a temporary stay.

2. This is a motion for an order of this Court to vacate a stay issued by the Supreme Court, New York County in spite of the denial of a stay by the Appellate Division and

several other judges of the Supreme Court pending a hearing on the issue of whether one of the arbitrators, James E. Birdsall, should be disqualified for two prior contacts with a company which has an indirect interest in the outcome of the case and which contacts were not recent, nor continuing, nor substantial.

3. In 1968, Kidde, a general contractor, entered into an agreement with The Mount Sinai Hospital of Hartford, Connecticut ("Hospital") to partially demolish and reconstruct, and to renovate, the Hospital based on drawings and specifications issued by the Hospital's architect, E. Todd Wheeler and The Perkins & Will Partnership ("Perkins & Will").

4. Kidde commenced an arbitration proceeding against the Hospital in April, 1972, for delay damages and changes. In August 1972, Mr. Justice Frank of the Supreme Court, New York County, denied a motion for a stay and directed the parties to proceed to arbitration.

5. In February 1973, when the Hospital construction was 98% complete, Boise, the parent company of Kidde, sold all of the outstanding stock of Kidde to A. M. Kinney, Inc. ("Kinney"). The terms of the sale agreement are included in the affidavit of Will M. Storey, Senior Vice President of Boise, annexed hereto as Exhibit I. Kinney agreed that Kidde would complete the construction of the Hospital; that the claim under the agreement between Kidde and the Hospital would be arbitrated in the name of Kidde at the expense of Boise; that Kinney would

pay Boise all net and after taxes proceeds from said claim; and that Boise would be liable for any damages assessed in connection with the prosecution of said claim.

6. Kidde was not a party to the sale agreement between Boise and Kinney and made no assignment to anyone of its claim against the Hospital. Under the terms of said sale agreement, the relationship between Kidde and the Hospital remained untouched.

7. The Hospital and its architect, Perkins & Will, have been aware of the sale by Boise of the stock ownership of Kidde to Kinney almost from the date of said sale. Conferences were had in May 1975 and correspondence was exchanged between officers and representatives of Boise and the Hospital in which the Hospital recognized that Boise had an interest in Kidde's claim against the Hospital. (See affidavit of Will M. Storey, referred to in paragraph 5, above).

8. The Hospital served a Demand for Arbitration on Perkins & Will on April 20, 1973, for the acts of Perkins & Will and/or its engineers and moved this Court for consolidation. Perkins & Will opposed the Hospital's motion and moved for a stay which was denied by Mr. Justice Helman in July 1973.

9. In the same month, July 1973, the Hospital construction work was completed by Kidde, which then served the Hospital and Perkins & Will with a revised and updated claim in the total amount of $9.6 million.

a) vacate the temporary stay of arbitration, and

b) grant such other and further relief as may be just and appropriate.

Louis H. Willenken

Sworn to before me this
21st day of October, 1975

Notary Public

STEPHEN H. KINNEY, JR.
Notary Public, State of New York
No. 4523042
Qualified in New York County
Commission Expires March 30, 1976

Exhibit V: Affidavit by Will M. Storey

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

WILL M. STOREY, being duly sworn, deposes and says:

1. I am a Senior Vice President of Boise Cascade Corporation ("Boise") and am fully familiar with all of the facts and circumstances concerning the acquisition by Electric Bond and Share Company, Inc. ("EBS Co."), Boise Cascade's predecessor, of Walter Kidde Constructors Incorporated ("Kidde" of "Contractor"), the change of name of EBS Co. to Ebasco Industries Incorporated ("Ebasco"), the merger of Ebasco into Boise and the subsequent sale of the stock of Kidde to A. M. Kinney, Inc. ("Kinney"), an Ohio corporation, in 1973.

2. Kidde was and is a construction company, all of the stock of which was acquired by EBS Co. (which subsequently changed its name to Ebasco Industries Incorporated ("Ebasco")), a New York corporation, in 1960. See page 25 of the Boise proxy statement dated July 23, 1969, annexed hereto as Exhibit "A".

3. On October 29, 1968, Kidde and The Mount Sinai Hospital of Hartford, Connecticut ("Owner") entered into a contract for the demolition and reconstruction in part and renovation in part of the Hospital's structures and facilities, which contract has given rise to numerous court actions and

an arbitration proceeding. Article 46 of the General Conditions of the October 29, 1968 construction contract provides:

> "46. Assignments. - The Contractor shall not assign the whole or any part of this contract or any monies due or to become due hereunder without the written consent of the Owner and of all sureties executing any bonds on behalf of the Contractor, in connection with said contract. In case the Contractor assigns the whole or any part of said contract or assigns all or any part of any monies due or to become due under said contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due the Contractor, or otherwise, shall be subject to all of the terms and conditions of said contract and of all instruments that are now or may hereafter be amendatory thereof or supplemental thereto, the rights and remedies of the Owner thereunder or arising by operation of law and to the liens of all persons, firms, and corporations for services rendered or materials supplied in connection with the performance of said contract."

4. Ebasco was merged into Boise on August 31, 1969 pursuant to an Agreement and Plan of Merger dated April 24, 1969, a copy of which is annexed hereto as Exhibit "B". Pursuant to this merger, Kidde became a wholly owned subsidiary of Boise.

5. Kidde served a written claim on the Hospital for several million dollars for delay and extra work in July, 1971.

6. Boise sold the stock of Kidde on February 2, 1973 by agreement of the same date, a copy of which is annexed

hereto as Exhibit "C" (price, other subsidiaries and other pending jobs of Kidde on the contract date having been deleted). Three sections of said agreement concern Kidde's construction contract with the Hospital.

7. Pursuant to Section 12 of said sale agreement, Boise and Kinney agreed that Kidde would complete the Hospital project for Boise's account with Boise paying to Kidde the actual cost of completion. The pertinent part of Section 12 of the agreement reads as follows:

> "(a) Contracts that the Seller desires Kidde to complete, or cause to be completed, for the Seller's account, namely, Mt. Sinai Hospital...
>
> ***
>
> The Seller shall pay to Kidde the actual cost (exclusive of profit) to Kidde of the performance of such contracts to the completion or termination thereof, shall be entitled to all receipts under such contracts, and shall hold the Buyer and Kidde harmless from any liability or loss arising from breach of such contracts or otherwise arising in connection with such contracts."

8. In Section 8 of said agreement, Boise agreed to indemnify Kidde as follows:

> "Indemnification. The seller shall indemnify and hold harmless Kidde and the Buyer, at all times after the date of this Agreement, against, from, and in respect of (a) all liabilities of Kidde (and of its subsidiaries) of any nature, whether accrued, absolute, contingent, or otherwise, existing at time of closing of this sale, including, without limitation, any tax liabilities, accrued in respect of, or measured by the income of Kidde, and of each of its subsidiaries, for, any period ending at or prior to such time of closing, or arising out of transactions entered into, or any state of facts existing, on or prior to such time; (b) all liabilities of, or claims against, Kidde, and each of its subsidiaries, arising out of the conduct of the business of Kidde, and of its subsidiaries,

prior to said time of closing, or arising out of any presently existing contract or commitment (except as arising out of the performance, as of the date of closing, of Paragraph 12 category (b) contracts, or arising out of any contract or commitment entered into or made by Kidde, or by any of its subsidiaries, between the date hereof and the closing (except as permitted by the provisions of subparagraph (c) of paragraph 5); (c) all liabilities of, or claims against, Kidde arising out of the prior or future exercise of any and all presently outstanding powers of attorney given by Kidde, it being understood that Kidde is to have no obligation or responsibility to cancel or revoke any such powers unless and until requested so to do by the Seller; (d) any damage or deficiency resulting from any incorrectness in any certificate or other instrument furnished or to be furnished to the Buyer hereunder; and (e) all actions, suits, proceedings, claims, demands, damages, assessments, arbitrations, judgments, and decrees, and all costs and expenses incident to any of the foregoing."

9. Boise agreed to hold Kidde harmless for claims arising out of work done by Kidde, in Section 11 of the agreement with Kinney, as follows:

"Claims. All existing and future claims by and against Kidde arising out of work performed by Kidde, and/or its subsidiaries, and joint ventures, prior to time of closing of this sale, and all existing and future claims and assessments against Kidde in any manner or for any cause arising out of the business, affairs, and operations of Kidde, and/or its subsidiaries, and joint ventures, prior to such time of closing, or fairly attributable or traceable to such performance, business, affairs, and operations prior to such time, shall be litigated or arbitrated, or defended against, by the Seller, at its expense, in the name of Kidde. The Seller shall be entitled to all net and after-tax proceeds from said claims and shall be liable to Kidde and the Buyer for all damages adjudged, decreed, awarded, or assessed against Kidde or the Buyer in connection with said claims. The Seller shall hold the Buyer and Kidde harmless from any loss in connection with said claims and assessments."

10. As of January 24, 1973, a Kidde payment request indicated that $13,713,170.42 of work had been completed for the Hospital, which represented approximately 98% of the contract price. A copy of that payment request is annexed hereto as Exhibit "D".

11. Thus, the sale of the stock of Kidde by Boise to Kinney in February of 1973 occurred four years and four months after the contract between Kidde and the Hospital; occurred more than two years after the claim was first made against the Hospital; and occurred when Kidde's work was substantially completed. The claimant is still the same viable legal entity that entered into the contract with the Hospital and is still engaged in construction work.

12. Subsequent to the sale of the Kidde stock by Boise to Kinney, the Hospital was informed numerous times of the status of Kidde and of the relationship of Boise to Kidde in respect of Kidde's claim. To cite an example, a letter from Morris A. Fierberg Co., a Kidde subcontractor, to Kidde, dated April 23, 1973 and annexed hereto as Exhibit "E", refers to Kidde's "liquidation situation with Boise Cascade". On information and belief, Mr. Morris A. Fierberg, the President of that Company, was, on the

date of the contract between Kidde and the Hospital and on April 23, 1973, the date of said letter, a member of the Hospital's Building Committee.

13. To further illustrate the awareness of the Hospital and its Architect of the Boise-Kidde relationship in regard to said claim, there is annexed hereto as Exhibit "F" a letter dated October 11, 1973 from the Hospital's Architect, E. Todd Wheeler and The Perkins and Will Partnership, which is addressed to Kidde in care of Boise.

14. In May, 1975, Thomas H. Gonser, Associate General Counsel and Assistant Secretary of Boise, met with Dr. Isidore Geetter, the medical administrator of the Hospital. Subsequent to that meeting, on June 3, 1975, Mr. Gonser wrote Dr. Geetter on Boise letterhead referring to the claim against the Hospital as "our claim". A copy of that letter is annexed hereto as Exhibit "G". Dr. Geetter responded by letter dated June 10, 1975 addressed to Mr. Gonser at Boise, acknowledging that counsel handling the Kidde claim against the Hospital are Boise's trial counsel, and stating that a copy of Mr. Gonser's letter had been shared with Mr. Reiss (the Hospital's counsel). A copy of Dr. Geetter's letter is annexed hereto as Exhibit "H".

BEST COPY AVAILABLE

15. There has been no assignment by Kidde of its construction contract with the Hospital. On the contrary, said agreement specifically provides that Kidde would, after its stock was acquired by Kinney, continue and complete the Hospital project. This was performed by Kidde and the construction completed in July, 1973. The transaction between Boise and Kinney was simply and solely a sale of corporate stock by one parent corporation to another.

BOISE CASCADE CORPORATION

By William Stevens
Its Senior Vice President

Sworn to before me this 15th day of October, 1975.

William Smith
Notary Public for Idaho
Residing at Boise, Idaho
My commission expires: 11/1/77

VOLUME III

AMERICAN ARBITRATION ASSOCIATION
NEW YORK CITY, NEW YORK
CASE NO. 1310-0356-72

Exhibit W:
Selected Pages of Arbitration Transcript

In the Matter of the Arbitration :

October 7, 1975

- between - :

WALTER KIDDE CONSTRUCTORS, INC., :

Claimant, :

-vs- :

THE MOUNT SINAI HOSPITAL OF HARTFORD, CONNECTICUT and STATE OF CONNECTICUT HEALTH and EDUCATION FACILITIES AUTHORITY (ASSIGNEE), :

Respondents, :

- and - :

E. TODD WHEELER and THE PERKINS & WILL PARTNERSHIP, :

Respondents. :

American Arbitration Association
140 West 51st Street
New York, New York

For the American Arbitration Association:

SAMUEL S. ADLERSTEIN, Chairman.

JAMES E. BIRDSALL, Arbitrator.

LAWRENCE B. COONAN, Arbitrator.

A P P E A R A N C E S:

For Walter Kidde Constructors, Inc.

MESSRS. REID & PRIEST
40 Wall Street
New York, N. Y. 10005
BY: LOUIS H. WILLENKEN, ESQ., of Counsel
and
WILLIAM J. O'DONNELL, ESQ., of Counsel
and
STEPHEN H. KINNEY, JR., ESQ., of Counsel.

For the Mount Sinai Hospital of Hartford, Conn. and State of Connecticut Health and Education Facilities Authority (Assignee)

MESSRS. GREENBERG, TRAYMAN, HARRIS, CANTOR, REISS & BLASKY
100 Church Street
New York, N. Y. 10007
BY: JEROME REISS, ESQ., of Counsel
and
HOWARD BLUM, ESQ., of Counsel.

For Perkins & Will Partnership

MESSRS. HART & HUME
10 E. 40th Street
New York, N. Y. 10016
BY: JOSEPH A. BERGADANO, ESQ., of Counsel
and
BARBARA W. THOMPSON, ESQ., of Counsel

ALSO PRESENT:

Dr. Isidore Geetter
Bernard Lippe & Assoc., Consult. to Mt. Sinai Hosp.
Norman Coplan, Esq., (Personal Counsel for Perkins & Will)
John Lodes, Esq., (Personal Counsel for Perkins & Will)
Mario A. Fristachi, Esq., (Goetz & Fitzpatrick, P.C.)
Edward O. Adler, Esq., (Cunningham & Kaming, P.C.)
Donald E. Cordell, Esq., (Frank Briscoe Co., Inc.)

over there who is really, you know: "Will the real Kidde stand up."

CHAIRMAN ADLERSTEIN: Can this be cleared up?

MR. O'DONNELL: I think I explained this at our very first meeting before the hearings began. We served our first demand in this hearing by Kidde, who was then a legal entity, in 1970. In the course of the construction the hospital, and as a result, in some respect, of the losses it sustained in the construction of this hospital and the delays that were incurred, Kidde was liquidated, not sold. The assets and liabilities of Walter Kidde Constructors were taken down by its parent company, Boise Cascade Corporation.

Now, I will have someone here to explain just how it happened, I will have the documents in respect of the liquidation, not at the next hearing, which is tomorrow, but at the very next hearing after tomorrow.

MR. WILLENKEN: No, in due course.

MR. O'DONNELL: All right. As we have already cancelled the October 17th meeting, we will be able to produce to your

VOLUME IV

AMERICAN ARBITRATION ASSOCIATION
NEW YORK CITY, NEW YORK
CASE NO. 1310-0355-72

Exhibit X: Selected Pages of Arbitration Transcript

In the Matter of the Arbitration

October 8, 1975

- between -

WALTER KIDDE CONSTRUCTORS, INC.,

Claimant,

-vs-

THE MOUNT SINAI HOSPITAL OF HARTFORD, CONNECTICUT and STATE OF CONNECTICUT HEALTH and EDUCATION FACILITIES AUTHORITY (ASSIGNEE),

Respondents,

- and -

E. TODD WHEELER and THE PERKINS & WILL PARTNERSHIP,

Respondents.

OCT 20 1975

AMERICAN ARBITRATION ASSOCIATION
140 West 51st Street
New York, New York

For the American Arbitration Association:

SAMUEL S. ADLERSTEIN, Chairman.

JAMES E. BIRDSALL, Arbitrator.

LAWRENCE B. COONAN, Arbitrator.

A P P E A R A N C E S:

For Walter Kidde Constructors, Inc.

MESSRS. REID & PRIEST
40 Wall Street
New York, New York 10005
BY: LOUIS H. WILLENKEN, ESQ., of Counsel
and
WILLIAM J. O'DONNELL, ESQ., of Counsel
and
STEPHEN H. KINNEY, JR., ESQ., of Counsel.

For the Mount Sinai Hospital of Hartford, Conn. and State of Connecticut Health and Education Facilities Authority (Assignee)

MESSRS. GREENBERG, TRAYMAN, HARRIS, CANTOR, REISS & BLASKY
100 Church Street
New York, New York 10007
BY: JEROME REISS, ESQ., of Counsel
and
HOWARD BLUM, ESQ., of Counsel

For Perkins & Will Partnership

MESSRS. HART & HUME
10 E. 40th Street
New York, New York 10016
BY: JOSEPH A. BERGADANO, ESQ., of Counsel
and
BARBARA WESLEY THOMPSON, ESQ., of Counsel

ALSO PRESENT:
Dr. Isidore Coetter
Bernard Lippe & Assoc., Consult. to Mt. Sinai Hospital
Norman Coplan, Esq., (Personal Counsel for Perkins & Will)
John Lodge, Esq., (Personal Counsel for Perkins & Will)
Mario A. Fristachi, Esq., (Coetn & Fitzpatrick, P.C.)
Edward O. Adler, Esq., (Cunningham & Hawkins, P.C.)
Donald E. Cordell, Esq., (Frank Briscoe Co., Inc.)

that because of Mr. Birdsall's disclosure that he has been retained by Boise Cascade and because Boise Cascade turns out to be the sole party in interest, as well as the real party in interest in these proceedings, that I respectfully request that his services in this proceeding not be continued and I have brought with me a letter which I had typed this morning to that effect, if I may, sir?

CHAIRMAN ADLERSTEIN: Yes. All right, Mr. Reiss, we will have a short recess while we consult.

MR. REISS: With due respect, may I draw the attention of the arbitrators to the Construction Industry Arbitration Rules and, in particular, Section 18.

MR. BERGADANO: On or off the record, I think we ought to point out that there is a typographical error. It is dated the 7th when it should be the 8th.

MR. O'DONNELL: There is another error in that letter, too. It refers to Boise having been dissolved. I don't think I used that word. I said liquidated.

CHAIRMAN ADLERSTEIN: Well, I don't know to what extent that will affect the contents of the letter, but if you gentlemen and lady will excuse us?

MR. REISS: May I respectfully request that the date be changed to the 8th?

CHAIRMAN ADLERSTEIN: All right. Do you want the word "dissolved" changed, too?

MR. REISS: No, because dissolved, it is true that Mr. O'Donnell used the term liquidated, but the usual legal term is dissolved. Now, what the difference is, I don't know.

MR. O'DONNELL: There is a legal difference.

CHAIRMAN ADLERSTEIN: For the moment we are in a state of suspension.

(There is a conference by the panel out of the hearing of the parties.)

(After conference.)

CHAIRMAN ADLERSTEIN: Your letter has been received, Mr. Reiss and accepted and the matter has been put in the hands of the Association who will come to a conclusion in due course. For the present we will proceed

OPINION OF HON. LLOYD F. MACMAHON

MacMAHON, District Judge.

Defendants E. Todd Wheeler and The Perkins & Will Partnership (hereinafter referred to collectively as "Perkins & Will" or "Architect") move, pursuant to Rules 12(b) and 19, Fed.R.Civ.P., to dismiss the amended complaint for plaintiff's failure to join an indispensable party plaintiff whose joinder would destroy diversity jurisdiction in this case.

Plaintiff Boise Cascade Corporation ("Boise") is a Delaware corporation having its principal place of business in Idaho. Perkins & Will is a partnership of architects, none of whose members are citizens of Delaware or Idaho. Several partners, however, are citizens of New York. Perkins & Will asserts on this motion that Walter Kidde Constructors Incorporated ("Kidde"), an existing New York corporation, is the real party in interest and an indispensable party to this suit.

It is well settled that, for purposes of diversity jurisdiction, a partnership is a citizen of each state of which a general partner is a citizen[1] and a corporation is a citizen of the state of incorporation

and the state where its principal place of business is located.[2] Thus, if Kidde, the New York corporation, is an indispensable party plaintiff, it cannot be joined because diversity will be destroyed since several members of Perkins & Will, the defendant partnership, are also citizens of New York and the complaint must therefore be dismissed.

In order to place this motion in proper context, a review of the factual background of the suit is necessary.[3] On October 29, 1968, Kidde made a written contract with the Mt. Sinai Hospital of Hartford, Connecticut (the "Hospital") to act as general contractor on a certain construction project. Paragraph 46 of the General Conditions of that contract forbade Kidde from assigning "the whole or any part of this contract or any monies due or to become due hereunder without the written consent" of the Hospital. Perkins & Will acted as the architect for this project.

During the course of construction, a number of differences and disputes arose, resulting in Kidde's making various claims for money due because of "changes,

extras, and delays." Pursuant to the contract, arbitration proceedings between Kidde and the Hospital were commenced on Kidde's claim for $9,645,787.

While these proceedings were pending, the Hospital, on April 20, 1973, demanded arbitration with Perkins & Will, stating as the nature of the dispute "[t]he arbitration instituted by Walter Kidde Constructors Inc. against the Mt. Sinai Hospital . . ." and claiming for relief "[s]o much of damages claimed by Walter Kidde Constructors Inc. which were the fault of the Architects and their Engineers."

Through various proceedings in the New York courts, the two arbitrations were consolidated. Thus, Perkins & Will stands as a "third party defendant" to the Hospital in the consolidated Kidde-Hospital-Architect arbitration.

Arbitration hearings commenced in September 1975 but were suspended in November 1975 as a result of the disqualification of one of the arbitrators by the Supreme Court, New York County. That arbitration has not yet recommenced.

The within action, asserting a direct claim by Boise against the Architect for $10 million in compensatory damages and $10 million in punitive damages, was commenced on December 5, 1975.[4] The amended complaint alleges that Boise:

> "was at all times mentioned in this complaint, by itself and another corporation merged into Boise, sole stockholder of Walter Kidde Constructors Incorporated ('Kidde') until February 1973; was responsible for the completion of construction and any losses arising out of a Kidde contract to construct a hospital in Hartford, Connecticut (hereafter 'Project'), and is entitled to the proceeds and is responsible for the expenses of all claims arising out of the Project."[5]

It is this assertion of "responsibility" and "entitlement" which is the basis for Boise's contention that it is the sole real party in interest in this action and which Perkins & Will disputes on this motion.

As we have noted, Kidde contracted with the Hospital in October 1968. At that time, Ebasco Industries Inc. ("Ebasco"), a New York corporation, was the sole stockholder of Kidde. In April 1969, Ebasco was

merged into Boise, which thereupon became Kidde's sole stockholder. Boise sold all of Kidde's stock to A. M. Kinney, Inc. ("Kinney") on February 2, 1973, pursuant to a written sale agreement (the "Sale Agreement") signed by Boise and Kinney, but not by Kidde.

To support its contention that it is the "owner" of the claims asserted here, Boise depends upon certain provisions in the Sale Agreement which provide in pertinent part:

> "10. Assets and liabilities. All assets and liabilities of Kidde, and its subsidiaries, as of the time of this sale, shall belong to and be assumed by [Boise]. . . .
>
> 11. Claims. All existing and future claims by and against Kidde arising out of work performed by Kidde . . . prior to time of closing of this sale . . . shall be litigated or arbitrated, or defended against by [Boise], at its expense, in the name of Kidde. [Boise] shall be entitled to all net and after-tax proceeds from said claims and shall be liable to Kidde and [Kinney] for all damages adjudged, decreed, awarded, or assessed against Kidde or [Kinney] in connection with said claims. . . .

> 12. Unperformed Contracts. [Kinney] and [Boise] recognize the existence of four categories of wholly or partly unperformed contracts to which Kidde, and/or any of its subsidiaries, is now a party.
>
> (a) Contracts that [Boise] desires Kidde to complete or cause to be completed, for [Boise's] account, namely, Mt. Sinai Hospital. . . ."

Boise contends that, by virtue of these provisions, it "retained" substantially all of Kidde's assets and liabilities, including the claims arising from the Hospital project. Perkins & Will disagrees, asserting that Boise cannot "retain" what it never owned; that is, the claim asserted in this action belonged to the contracting party, Kidde, an existing legal entity under New York law, which at no time signed, adhered to, or acquiesced in the Sale Agreement, nor assigned these claims in any other way. According to defendants, therefore, Kidde is an indispensable party to this action.

Rule 19(a), Fed.R.Civ.P., describes a person needed for just adjudication as one who should be joined if:

> "(1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest in the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest."

It is readily apparent that Kidde would be a "proper party" to this action if joinder were permissible. It, and not Boise, entered the construction contract, and an arbitration proceeding in Kidde's name is presently pending against the Hospital in which the Architect has been joined as a party. Plaintiff asserts, however, that for a number of reasons Kidde is neither "necessary" nor "indispensable" to this action.

First, Boise claims that, as sole stockholder of Kidde from 1969 to 1973, it had the right to do whatever it pleased with the corporate property of Kidde, which would include all claims arising from the Hospital project, and, therefore, it was entitled to "retain" these claims in the Sale Agreement.

This argument falls before the longstanding principle of New York law that a corporation's property rights are entirely distinct from those of its shareholders and that

> "even complete ownership of capital stock does not operate to transfer the title to corporate property and that ownership of capital stock is by no means identical with or equivalent to ownership of corporate property."[6]

Plaintiff next contends that Kidde acted, at least some of the time, as a "dummy" and that Boise performed a substantial portion of the work. In this respect, Boise is asking us to "pierce the corporate veil" in order to find that it is the sole party in interest. However, it is axiomatic that a corporation is a "creature of the law, endowed with a personality separate and distinct from that of its owners" and that the "dual personality of parent and subsidiary is not lightly disregarded."[7]

In any event, Boise's contention is irrelevant, for under New York law

> "the corporate veil is never pierced for the benefit of the corporation or its stockholders. The procedure is only permissible against a purported stockholder who is using the corporate veil to defraud. * * * A sole stockholder receives the same protection and immunities that stockholders of multi-owned corporations enjoy. He is also subject to the same disadvantages. He is not the corporation either in law or fact and, having elected to take the advantages, it is not inequitable to subject him to the disabilities consequent upon his election."8

Plaintiff's next argument is that it has been authorized by Kidde to pursue these claims. Although Boise admits that Kidde was not a party to the Sale Agreement and that Kidde never formally assigned any claims to Boise, Boise points to two resolutions by Kidde's board of directors appointing Boise employees as Kidde vice-presidents to pursue claims arising from the construction project. Plaintiff, however, misreads the clear wording of these resolutions which state that the

> "authority, powers and duties as such Vice President shall be limited to the matter of discharging the obligations and

> pursuing the rights of <u>this corporation</u> [i.e., Kidde] relative to completing [the Hospital construction project]. . . ." [Emphasis added.]

By their own terms, the resolutions grant the Boise employee authority to pursue <u>Kidde's</u> claims and therefore do not purport to transfer them to anyone.

Finally, Boise asserts that, whatever lack of legal formality has occurred in its "assumption" of Kidde's apparent rights in this matter, Kidde's citizenship should be ignored for diversity purposes, even if it should be joined, because it would merely be a nominal party. This argument, which displays a flippant disregard for the well-settled principles of law already stated, is also unavailing.

As we noted earlier, the Kidde-Hospital-Architect arbitration was suspended because of the disqualification of one of the arbitrators. The reason for that disqualification was that the arbitrator disclosed that he had previously worked for Boise, after it became apparent that Boise claimed some interest in the outcome of the proceeding.

In an affidavit filed with the Appellate Division, First Department, in opposition to the disqualification of the arbitrator, Kidde's counsel (who is also Boise's counsel in the present action) stated that Boise is "a company which has an indirect interest in the outcome of the case and which contacts were not recent, nor continuing, nor substantial." [Emphasis added.] This affidavit further stated that

> "Kidde was not a party to the sale agreement between Boise and Kinney and made no assignment to anyone of its claims against the Hospital. Under the terms of said sale agreement, the relationship between Kidde and the Hospital remained untouched."

Also submitted was a sworn affidavit by a senior vice-president of Boise, which states that

> "the sale of the stock of Kidde by Boise to Kinney in February of 1973 occurred four years and four months after the contract between Kidde and the Hospital. * * * The claimant [Kidde] is still the same viable legal entity that entered into the contract with the Hospital and is still engaged in construction work."

Boise has been unable to explain how it can maintain that only Kidde has a direct interest in the arbitration proceeding in the claims against the Hospital and that only Boise has a direct interest in the claims in this action against the Architect, although all of the claims arose from the same construction project as a result of "delays, changes and extras."

We do not mean to intimate by the foregoing that Boise has absolutely no right to assert its claims for relief in this action.[9] We do find, however, that Kidde also appears to have rights in this matter, rights which seem to be so inextricably intertwined with those asserted by Boise that any disposition on the merits in Kidde's absence may impair Kidde's ability to protect its own interests and/or subject the Architect to multiple liability. Thus, Kidde is an entity which should be joined, pursuant to Rule 19(a), Fed.R.Civ.P., for a just adjudication of this matter.

Since Kidde cannot be joined as a party plaintiff without ousting the court of jurisdiction, we must determine whether "in equity and good conscience the action should proceed."[10] After due consideration of all

relevant circumstances, we conclude that it should not.

If Boise were to succeed against the Architect here, the effect upon Kidde's claims in arbitration, to which Perkins & Will is a party, is, to say the least, uncertain. A recovery here might either restrict Kidde's recovery, if any, in that proceeding or subject the Architect to dual liability. So, also, if Perkins & Will should prevail in this action, Kidde's claims in arbitration could be adversely affected.

Thus, it appears that any judgment rendered in this suit might be prejudicial to Kidde and/or the Architect. We can conceive of no way, short of requiring Kidde's joinder, to alleviate this prejudice. Furthermore, there has been no argument by Boise that a dismissal in this suit would leave it without a remedy. Apparently, it could commence a new action in the New York courts, joining Kidde as a party.

We conclude, for the foregoing reasons, that Kidde is an indispensable party plaintiff to this action which cannot be joined without destroying the diversity jurisdiction of the court. This action must, therefore,

be dismissed.

Accordingly, defendants' motion to dismiss this action, pursuant to Rules 12(b) and 19, Fed.R.Civ.P., is granted.

So ordered.

Dated: New York, N. Y.
September 10, 1976

Lloyd F MacMahon

LLOYD F. MacMAHON
United States District Judge

FOOTNOTES

1

Great Southern Fire Proof Hotel Co. v. Jones, 177 U.S. 449 (1900); Lewis v. Odell, 503 F.2d 445 (2d Cir. 1974); C.A. Wright, Law of Federal Courts § 27 (2d ed. 1970).

2

28 U.S.C. § 1332(c).

3

The following facts appear in the pleadings and the papers submitted on this motion and are undisputed.

4

The gravamen of the amended complaint is the Architect's alleged fraud and negligence.

5

Amended Complaint ¶ 2.

6

Torrey Delivery, Inc. v. Chautauqua Truck Sales & Serv., Inc., 47 App.Div.2d 279, 282, 366 N.Y.S.2d 506, 510 (4th dep't 1975), quoting from Brock v. Poor, 216 N.Y. 387, 401 (1915). See also Connecticut General Life Ins. Co. v. Superintendent of Insurance, 10 N.Y.2d 42, 50 (1961); Matter of Green, 231 N.Y. 237, 246-247 (1921); People v. American Bell Telephone Co., 117 N.Y. 241, 255 (1889).

7 Berger v. Columbia Broadcasting System, Inc., 453 F.2d 991, 994 (5th Cir. 1972).

8 Colin v. Altman, 39 App.Div.2d 200, 202, 333 N.Y.S.2d 432, 433-434 (1st dep't 1972).

9 To do so would require us to inquire into the validity of the Sale Agreement. This, of course, is not an issue properly before us, nor could it be in the absence of Kinney and Kidde.

10 Rule 19(b), Fed.R.Civ.P.

COPY RECEIVED
Bernstein, Weiss, Porter, Copian & Weinstein
ATTORNEYS FOR Def.-Resp.-Cnt.
DATE Nov 5, 1976
TIME 3:30

COPY RECEIVED
HART & HUME
ATTORNEYS FOR Petitioner Hill
11/5/76 3:15 D Shinn